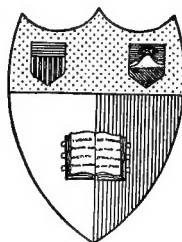


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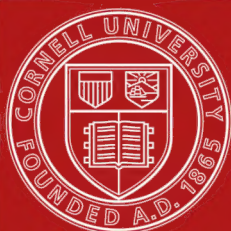
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**DEBATES IN THE
BRITISH PARLIAMENT
1911-1912
ON THE
DECLARATION OF LONDON
AND THE
NAVAL PRIZE BILL**



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1919**

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PREFACE.

The Powers assembled at the Hague Conference in 1907 attempted by Convention XII to establish an International Prize Court to which appeals in prize causes could be carried under certain rules from national prize courts. Having obtained some measure of agreement upon the substance of the rules of the law of prize to be enforced in such a Court by means of the London Naval Conference in 1908-1909, the British Government introduced into Parliament in 1910 a Naval Prize Bill to provide for appeals in prize from British prize courts to the International Court, for the appointment by the Crown of British members on the Court and for British participation in the expenses thereof.

That Bill was debated for a while and finally withdrawn. When Parliament reassembled in February, 1911, debate arose anew in anticipation of the reintroduction of the Bill or the introduction of one similar to it. Debate continued, after the Bill was brought into the Commons in June, until the lower house passed the measure by the safe vote of 172 to 125 on December 7, and ended when the Lords, by a vote of 145 to 53, refused the Bill a second reading at the time, December 12, and, to all intents and purposes, defeated the measure by thus postponing second reading to a point beyond the end of the current session.

The Liberal Government of Mr. Asquith, at the time in power, sponsored the Bill and had for its foundation a party situation in the Commons portrayed by the following figures:

Ministry:	
Liberal	275
Nationalist	82
Labor	40
	<hr/>
Majority	397
Opposition:	
Conservative and Unionist	273
	<hr/>
Majority	124

In the Lords the characteristic Unionist majority prevailed, with the result that the Government was in a minority and the Opposition leader was the Majority leader.

The fact that the proposed International Court would be expected to apply the law as set forth by the Naval Conference of 1909 in the Declaration of London had the result that a large part of the debate on the Bill to allow appeals to that Court turned on the merits of the rules of law contained in the Declaration. Two subjects were therefore under discussion: (1) The question of the International Court and appeals to it from British prize courts; (2) the maritime law of the Declaration of London.

The following material consists of extracts from the official reports of the debate in Parliament. The material is arranged chronologically; when extracts are given from debates occurring in the House of Lords and the House of Commons under the same date the material from the House of Lords is given first. Captions, "House of Lords" and "House of Commons," are used to indicate the house in which the discussion is proceeding and these captions are inserted only when the scene of the debate shifts from one house to the other. Subtitles, as given in the official reports, are retained to indicate the subdivision of subject matter in the discussion.

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THE DECLARATION OF LONDON
AND
THE NAVAL PRIZE BILL

HOUSE OF LORDS.

FEBRUARY 6, 1911.¹

ADDRESS IN REPLY TO KING'S SPEECH.²

The MARQUESS OF LANSDOWNE.³

* * * * *

I pass to another matter which is not mentioned in the gracious speech, although some of us might have expected that it would have been mentioned. I mean the Declaration of London. We all of us welcome the attempts which have been made, not without a considerable amount of success, to settle by peaceful means international difficulties and complications. In 1907 this country became a party to a convention entered into at The Hague for the establishment of an international prize court, and we have lately had another conference in this city for the purpose of drawing up the rules under which this international prize court is to do its work. The noble earl opposite must be aware that the publication of these rules has created very grave apprehensions in the minds of the commercial public. I wish carefully to guard myself against accepting all the criticisms which have been leveled at these rules. I am quite ready to admit that it is our business to compare the state of things which might arise under these rules, not with an ideal condition of things which we should like to arrive at if we could, but with the actual condition of things which takes place under the national rules by which foreign powers are at present guided. But making allowance for all this, I am bound to say that as to some points the uneasiness to which expression has been given does not seem to me altogether unreasonable. While I take it that most of us would be glad to see an international prize court substituted for the national prize courts with

¹ 7 H. L. Deb., 5 s., 17.

² The address of the King at the formal opening of the Parliament, February 6.

³ Lord Lansdowne, the Unionist (Opposition; Majority) leader in the House of Lords, was especially conspicuous this session because of his position in regard to the Parliament bill which raised a constitutional issue that dominated the entire session. He tried to secure a reform of the House of Lords that would meet with the approval of the Liberals, but when that failed and it became clear that the Government would not consent to any amendment of its bill, Lansdowne, followed by most of his party, took the stand that they must yield to the superior force. In the contest between the Government and the Opposition over the naval prize bill and the Declaration of London Lansdowne retained his position as majority leader in the upper house.

which we now have to be content, we should, most of us, be inclined to say that our approval was subject to two conditions—the satisfactory constitution of the court itself and the satisfactory framing of the rules which the court will have to administer.

The position of this country is different from that of any other; and for that reason we are surely right if we regard these questions with a more critical eye than other powers regard them. This country, owing to its insular position, is entirely dependent upon sea-borne supplies. We are constantly told that it is our business to maintain the command of the sea, and we are told with great confidence that we may depend upon maintaining that command. But be that command never so well maintained, does it not yet remain the case that in time of war the great ocean highways cannot be so thoroughly policed as to render it possible for trade to flow along them quite in its normal fashion? Our supplies must run the gauntlet of an enemy's cruisers, and the question which people are asking themselves is whether these new rules will really render it easier or more difficult for those supplies to reach our shores. It is impossible to discuss so intricate a subject upon an occasion like this: but I do wish to express my hope that His Majesty's Government will spare no pains to take into their confidence the representatives of the great commercial interests who, I think I am right in saying, had no part in the discussions which took place in London, and that they will endeavor, before these new regulations are ratified, to satisfy themselves that they are not really open to those objections which have been urged with so much force in many influential quarters.

ADDRESS IN REPLY TO KING'S SPEECH.¹

The LORD PRIVY SEAL and SECRETARY OF STATE FOR INDIA (the Earl of Crewe).²

* * * * *

The noble marquess mentioned two other subjects on which I ought to say a word. He spoke of the Declaration of London, and I was again grateful for a certain caution which he gave. So far as I have had the opportunity of reading comments upon the situation created by the promulgation of the Declaration of London, it seems to me that many people are disposed to forget that it is not a question of our being able to promulgate and enforce a system of international

¹ 7 H. L. Deb., 5 s., 38.

² The task of defending the Declaration of London and the naval prize bill in the House of Lords fell to Lord Crewe, the Liberal leader in that body. In March, however, he suffered a severe physical breakdown that necessitated his absence from Parliament for some months, during which time Viscount Morley assumed his leadership.

law which we should select if we had the sole making of it, having regard to our dependence on foreign food supplies, to our insular position, and to our place as the greatest naval power in the world; the question is, Are you going to get by international agreement, as international agreement there must be, some system which will place you in a stronger position, or at any rate in no worse a position, than if no such agreement was made? The question therefore to be asked of these provisions, of any particular provision, is whether it places us in a better or a worse position than if the Declaration of London were not promulgated and affirmed. I do not want to dwell on this subject now. In the first place, it is going to be discussed at the imperial conference,¹ and in the second place there will be opportunities later before there is any question of its being ratified, of discussion both in another place and here.

HOUSE OF COMMONS.

FEBRUARY 8, 1911.²

NAVAL PRIZE BILL.

Mr. Eyres-Monsell³ asked the Prime Minister if the naval prize bill will be reintroduced at an early date.⁴

The PRIME MINISTER.⁵ The bill will be reintroduced, but I am unable at present to name a date.

DECLARATION OF LONDON.

Captain Faber⁶ asked the Prime Minister if he will state whether the Australian Government has expressed itself as opposed to the Declaration of London; and whether he can make any statement concerning the Declaration.

The PRIME MINISTER. The Australian Government have given notice of their intention to submit objections to certain articles of the Declaration of London to the imperial conference. I do not propose at present to make any statement in regard to the Declaration.

¹ At the imperial conference held in 1907 it was decided that the conference should be held every four years. In accordance with this agreement, the next meeting had been called for May 23, 1911.

² 21 H. C. Deb., 5 s., 413.

³ Lieutenant Bolton M. Eyres-Monsell, a former naval officer, was active in his opposition to this bill, both in and out of Parliament. In June he was appointed opposition whip.

⁴ On June 23, 1910, Sir Edward Grey, supported by Mr. McKenna, the Attorney General, the Solicitor General, and Mr. McKinnon Wood, introduced a "bill to consolidate, with amendments, the enactments relating to naval prize of war," which passed the first reading. After the second reading had been deferred a number of times the bill was finally withdrawn November 21.

⁵ Mr. Asquith.

⁶ Conservative.

FEBRUARY 9, 1911.¹

DECLARATION OF LONDON.

Mr. Hunt² asked the Secretary of State for Foreign Affairs whether, in view of the fact that he has promised that both Houses of Parliament should have an opportunity of fully discussing the Declaration of London, and that ministers would not advise His Majesty to ratify a treaty to which parliamentary approval had been expressly refused, he would say whether the Declaration of London would be ratified if the House of Lords expressly refused its approval.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood).³ The Declaration of London is in a certain sense subsidiary to the prize court convention. In order that effect should be given to that convention in this country, legislation is necessary. Such legislation is embodied in the naval prize bill which will in due course be submitted to both Houses of Parliament.

Mr. ARTHUR LEE.⁴ Do we understand from that reply that the Declaration will in no case be ratified until after the naval prize bill has passed through both Houses?

Mr. McKINNON WOOD. The Declaration will not be ratified until after the naval prize bill has been discussed.

SIR GILBERT PARKER.⁴ Is it anticipated that the naval prize bill will be submitted to the Houses of Parliament this session?

Mr. SPEAKER. That does not arise out of the answer. I should like to point out to honorable members that we have 115 questions to get through before a quarter to 4 o'clock. I therefore really would beg honorable members to exercise some self-restraint.

Mr. Hunt asked the Prime Minister whether the naval prize bill will be postponed till after the colonial conference has considered the Declaration of London; and, if not, will refusal to ratify the Declaration nullify or render inoperative the whole or part of the naval prize bill.

The PRIME MINISTER. As at present advised, I should not take the second reading of the naval prize bill until after the conference has considered the Declaration.

Lord Charles Beresford asked whether the discussion on the naval prize bill would cover the whole of the ground of the Declaration of London; whether there would be a discussion on the Declaration of

¹ 21 H. C. Deb., 5 s., 416.

² Unionist.

³ Although he had been in Parliament but a short time—since 1906—Mr. McKinnon Wood had become prominent in Liberal circles, and had held the offices of Parliamentary Secretary to the Board of Education (1908) and Parliamentary Under Secretary to the Foreign Office (1908 —).

⁴ Conservative.

London separately; and whether a parliamentary vote would be taken on the Declaration of London and on the naval prize bill.

The **PRIME MINISTER**. I have already stated that in our opinion a convenient opportunity for discussing the whole of the Declaration of London will arise on the second reading of the naval prize bill; and my right honorable friend, the Secretary of State for Foreign Affairs, and I myself have made it abundantly clear that Parliament will have full opportunity of discussing the provisions of the Declaration before His Majesty is advised to ratify it.

Mr. **BUTCHER**.¹ Will any opportunity be given to Parliament to express their view, yes or no, whether the Declaration should be ratified?

The **PRIME MINISTER**. Ratification is a matter not for Parliament, but for the Crown. The Crown will not be advised to ratify if the House of Commons gives an adverse vote.

Mr. **BUTCHER**. Will the House of Commons have an opportunity of advising His Majesty's ministers, yes or no, whether they should ratify?

The **PRIME MINISTER**. Yes.

Mr. Butcher asked the Prime Minister whether the attention of the respective Governments of the Dominion of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa has been officially called by His Majesty's Government to the correspondence and documents respecting the international naval conference recently held in London (Cd. 4554) and the correspondence respecting the Declaration of London (Cd. 5418); whether such respective Governments have been furnished with copies of the papers above referred to and have been invited to express their opinions thereon to His Majesty's Government; and, if so, whether any replies have been received from such respective Governments.

Mr. Butcher also asked whether any communications have passed between His Majesty's Government and the respective Governments referred to in the last question with reference to the Declaration of London and the ratification thereof; and, if so, whether such communication will be laid upon the table of the House.

Mr. **HARCOURT**.² Copies of the parliamentary papers referred to were sent out to the Dominion Governments in the ordinary course, but no expression of their views was invited, and the only expression of opinion received is the resolution of the Commonwealth of Australia, to be submitted to the imperial conference, to which I referred in my answer of yesterday to the honorable member for Hampshire (West).

¹ Conservative.

² Lewis V. Harcourt, Principal Secretary of State for the Colonies and Liberal member for Rossendale.

Mr. Butcher further asked the Prime Minister whether any communications passed between His Majesty's Government and the respective Governments of the Dominion of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa, with reference to the naval prize bill, 1910, before such bill was introduced into the House of Commons in June of last year; and, if so, whether such communications will be laid upon the table of the House.

Mr. HARCOURT. No, sir; time and the circumstances of the case did not permit of prior consultation of the dominions. The bill was, however, forwarded to the Dominion Governments in July, 1910, and a reply has been received only from the Governor of the Dominion of New Zealand, saying that the contents of the bill have been noted by his ministers.

Mr. BUTCHER. Is the effect of that bill to place our fellow subjects beyond the seas under the jurisdiction of a new tribunal—the international prize court?

Mr. HARCOURT. I do not think a question of argument as to the effect of the bill should be put to me as Colonial Secretary.

Mr. BUTCHER. May I ask if this bill would affect our fellow subjects throughout our possessions?

Mr. HARCOURT. I do not think I could offer an opinion.

NAVAL PRIZE BILL.¹

Lord Charles Beresford² asked the First Lord of the Admiralty whether his signature, as one of the members responsible for the introduction of the naval prize bill, was appended with the knowledge and concurrence of the Board of Admiralty.

The FIRST LORD OF THE ADMIRALTY (Mr. McKenna).³ The answer is in the negative.

FEBRUARY 13, 1911.⁴

DECLARATION OF LONDON.

Lord Ninian Crichton-Stuart⁵ asked if parliamentary discussion on the ratification of the Declaration of London was postponed until

¹ 21 H. C. Deb., 5 s., 417.

² Both as a Conservative member of Parliament and as a retired naval officer, Admiralty Lord Beresford was a leader in the opposition to the naval prize bill. For an account of a meeting of admirals convened by him in London, June 19, 1911, see below, p. 262, note.

³ Reginald McKenna studied for the bar and practiced his profession for a number of years previous to his election to Parliament, in 1895, as a Liberal from North Monmouthshire. In 1905 he became Financial Secretary of the Treasury and in 1908 First Lord of the Admiralty. During 1907-8 he had served as President of the Board of Education.

⁴ 21 H. C. Deb., 5 s., 674.

⁵ Conservative.

after the imperial conference by request of the colonies; and, if so, why the colonies were not consulted as to the Declaration before it was signed.

Mr. LYNCH.¹ May I request that the right honorable gentleman does not answer this question in those terms, as the title "colonies" is inapplicable, and is considered offensive by Australians.

Mr. McKINNON WOOD. The answer is in the negative.

DECLARATION OF LONDON.²

Mr. Arthur Lee asked the First Lord of the Admiralty whether the provisions of the Declaration of London have been submitted to, and considered by the Board of Admiralty, with special reference to naval interests and the protection of British commerce; and whether the board has signified its approval of the Declaration.

Mr. McKENNA. The Admiralty were represented at the international naval conference which led up to the Declaration of London. Its provisions were submitted to and considered by the Admiralty, and there was no occasion for the board to signify their approval in a formal manner.

FEBRUARY 14, 1911.³

DECLARATION OF LONDON.

Mr. Arthur Lee asked whether the provisions of the Declaration of London have been submitted to, and considered by, the Board of Admiralty, with special reference to naval interests and the protection of British commerce; and whether the board has signified its approval of the Declaration.

Mr. McKENNA. The Admiralty were represented at the international naval conference which led up to the Declaration of London.

Mr. McKENNA. Yes, sir—no; let me explain. The Admiralty, and there was no occasion for the board to signify their approval in a formal manner.

Mr. LEE. In view of the fact that the Board of Admiralty has not signified its approval of the Declaration will the Government undertake that it will not be ratified until the Board of Admiralty have declared themselves to be satisfied that the naval interests of the country will be safeguarded?

¹ Nationalist.

² 21 H. C. Deb., 5 s., 837.

³ 21 H. C. Deb., 5 s., 870.

Mr. McKENNA. No; the honorable member must not assume from my reply that because the Board of Admiralty has not signified their approval in a formal manner that they have not approved.

Mr. LEE. Have they approved?

Mr. McKENNA. Yes, sir—no; let me explain. The Admiralty, being represented at the conference, there was no formal meeting of the Board of Admiralty, and consequently no formal approval has ever been expressed by the Board of Admiralty, but in the approval which has been given the assent of the naval members must be supposed.

Mr. LEE. Was the representative on the conference a member of the Board of Admiralty?

Mr. McKENNA. No. He was the Director of Naval Intelligence, and represented the Admiralty, and put forward the Admiralty views at the conference. His action was approved by the board, and that approval must be accepted as approval of the conference.

HOUSE OF LORDS.

FEBRUARY 15, 1911.¹

DECLARATION OF LONDON.

LORD ELLENBOROUGH.² My lords, I think it is due to the House that I should give my reasons for withdrawing the notice that is down in my name for to-morrow night with reference to the Declaration of London—namely:

To call attention to some of the reasons why the Declaration of London should not be ratified.

Since putting this notice on the paper I have been informed that a good deal of important correspondence is going on between the Foreign Office and the associated chambers of commerce, and that both parties are agreed that it would be undesirable to have a discussion while this correspondence continued. I regret very much that the discussion of this subject is postponed, as I think there certainly ought to be a debate on it in this House before it is brought up in the other House. In the meantime I would suggest to His Majesty's Government that they might send the declaration down to Portsmouth to be discussed by the officers going through the war course there, and that those officers should be asked their opinion as to the effect which the declaration, if strictly carried out, would

¹ 7 H. L. Deb., 5 s., 83B.

² The fact that Lord Ellenborough was a retired commander in the Royal Navy who had seen much active service may in some measure account for his stand against all restriction on naval warfare and for his belief that England's best defense was in the strength of her navy.

have on naval strategy in the North Sea, and what could be done to prevent neutral ships, or ships disguised as neutrals, approaching our men-of-war provided the Declaration is strictly adhered to. I would also ask whether any noble lord on the Government bench can tell me when it is likely that the correspondence to which I have referred will come to an end, so that the subject may be brought before this House.

The LORD PRESIDENT OF THE COUNCIL (Viscount Morley of Blackburn).¹ My lords, if I may say so, the noble lord has acted wisely in suspending—it is not more than that—the motion which was down on the paper for to-morrow night. Your lordships will probably remember that in the debate on the address my noble friend the leader of the house said that we proposed to defer consideration of the declaration until after, or, at all events, during the time of, the conference, and we understood by a gesture by the noble marquess opposite that he did not dissent from that intention. The noble lord puts the issue too narrowly when he says that we are waiting for the correspondence with the chambers of commerce. A much wider set of considerations than that correspondence is affected and has to be taken in view. The noble lord is mistaken in thinking that there could have been any discussion in another place. What the Government said in answer to questions in the House of Commons was that the matter was under discussion and consideration, and we could say nothing; and I am afraid that would have been the substance of my answer to the noble lord to-morrow night if he had proceeded with the matter.

The MARQUESS OF LANDSDOWNE. My lords, the noble viscount has referred to me, and I am anxious that there should be no misunderstanding as to our position in regard to this matter. I gathered from what I think was said by the noble earl, the leader of the house, that it was intended to bring up the Declaration of London for discussion at the colonial conference, and I may have made a gesture which seemed to signify approval of that proposal. But I certainly did not intend to convey the idea that, in my view, the reference of the Declaration of London to the colonial conference was in any way to preclude us from discussing the matter in this House should any peer desire to bring it before your lordships. I am under the impression, on the contrary, that the matter is likely to be brought

¹ After sitting in Parliament almost continuously from 1883 to 1908 and holding a number of important offices, including that of Secretary of State for India, the Rt. Hon. John Morley, one of the most distinguished of the Liberal leaders, took his seat in the House of Lords as Viscount Morley of Blackburn. His ability and previous career made it most fitting that he should succeed the Earl of Crewe as minority leader and thus have charge of the Government bills in that house. Cf. *ante*, p. 4, note.

up, and I can not but think that the discussion will be extremely useful.

VISCOUNT MORLEY OF BLACKBURN. We may have misinterpreted the gesture of the noble marquess. There is nothing at all unreasonable in the position he now takes up, and we shall be ready to meet the noble marquess and his friends when the time comes.

LORD ELLENBOROUGH. I may say that I think it highly desirable that a discussion should take place in this House, so that the members of the imperial conference will be able to read that debate in Hansard before they come to conclusions themselves on arriving in this country.

HOUSE OF COMMONS.

DECLARATION OF LONDON (DOMINION GOVERNMENT).¹

Mr. Butcher asked the Secretary of State for the Colonies whether he will lay upon the table of the House the resolution of the Commonwealth of Australia in reference to the Declaration of London which has been communicated to His Majesty's Government. Also upon what date or dates the parliamentary papers Cd. 4554 and Cd. 5418, relating to the Declaration of London, were sent by His Majesty's Government to the Dominion Governments; and whether the omission to invite the views of such Governments on those papers was accidental or deliberate on the part of His Majesty's Government.

Mr. HARCOURT. The resolution of the Commonwealth of Australia in reference to the Declaration of London will be published this week, with other resolutions, for the imperial conference. The parliamentary papers Cd. 4554 and Cd. 5418 were issued on 22d March, 1909, and 5th December, 1910, and sent to the Dominion Governments on 2d April, 1909, and 9th December, 1910, respectively. It has not been the custom to invite criticism on these matters, though His Majesty's Government is always prepared to receive it.

Mr. BUTCHER. May I ask whether no expression of opinion has reached the Government from any of the Dominion parliaments except that by the Commonwealth of Australia?

Mr. HARCOURT. I think not; but I should not like to pledge myself without notice.

INTERNATIONAL NAVAL CONFERENCE.

Mr. Butcher asked the Secretary for the Colonies whether he will lay upon the table of the House the general report of the drafting committee of the international naval conference in London, generally known as Mr. Renault's report.

¹ 21 H. C. Deb., 5 s., 1034.

The UNDER SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The report will be found, together with all other documents essential to a correct appreciation of the Declaration of London, in the Blue Books, Command Numbers 4554 and 4555, which were laid before Parliament as long ago as March, 1909.

Mr. BUTCHER. Is the report of M. Renault regarded as an exposition of the Declaration of London?

Mr. McKINNON WOOD. Certainly it is so regarded, and would be so treated in the international prize court.

FEBRUARY 16, 1911.¹

DECLARATION OF LONDON.

Lord Ninian Crichton-Stuart asked the Secretary of State for Foreign Affairs whether he would explain why the dominions and colonies were not consulted as to the Declaration of London before it was signed.

SIR E. GREY.² The answer is that such a course was not practicable at the time.

LORD NINIAN CRICHTON-STUART. Will the right honorable gentleman not take into consideration its enormous importance to the port of Cardiff in connection with British trade?

SIR E. GREY. As to the question of the importance to British trade, it has, of course, been taken into consideration all through.

Mr. Eyres-Monsell asked the Secretary for Foreign Affairs whether he had notified any of the foreign powers who were signatory to the Declaration of London of his intention to declare the term "l'ennemie" in article 34 of the Declaration to mean the Government of the enemy;³ and, if so, whether this interpretation of the term has been accepted by any of the powers concerned.⁴

¹ 21 H. C. Deb., 5 s., 1207.

² Sir Edward Grey took a leading part in the negotiations which resulted in the assembling of the naval conference in 1908. As Secretary of State for Foreign Affairs he issued the instructions to the British delegates and was an important factor in determining the Government's policy in regard to the Declaration of London.

³ For the text of the Declaration see Appendix, *post*, p. 693.

⁴ A discussion of the Declaration had been going on since the spring of 1909. A number of articles, many of them by eminent authorities, appeared in periodicals and the newspapers contained many communications on the subject, as well as accounts of speeches made at meetings called to discuss or take issue on the question of the ratification of the Declaration. The more important of the periodical literature is noted in the bibliography of *The Declaration of London, February 26, 1909*, by James Brown Scott (New York, 1919), and the newspaper material may be found in such papers as *The Times*, London.

SIR E. GREY. The answer is in the negative, but a notification will be made as soon as His Majesty's Government announce that they are ready to ratify.

MR. LEE. Has the right honorable gentleman any hope that by previous negotiations with foreign powers an interpretation of this term satisfactory to all concerned may be arrived at?

SIR E. GREY. So far I am not aware that anyone except in this country has expressed any doubt with regard to it. We shall notify other powers when we are in a position to announce that we are ready to ratify the Declaration, but until then we cannot say what steps will be taken.

MR. EYRES-MONSELL asked the Secretary for Foreign Affairs whether he has any information to show that the Government of the United States of America have declined to accept as authoritative the Foreign Office official translation of the Declaration of London, as published in Blue Book 4554, and have had a fresh translation made; and, if so, can he state what is the translation of the word "commercant," which appears in article 34.

SIR E. GREY. Correspondence on the subject of the translation is still going on with the United States Government, and pending its conclusion no statement can be made.

FEBRUARY 20, 1911.¹

DECLARATION OF LONDON (M. RENAULT'S REPORT).

MR. BUTCHER asked the Prime Minister whether the powers represented at the naval conference in London have agreed to regard the general report of the drafting committee, known as M. Renault's report, as an authoritative exposition of the meaning of the Declaration of London which would be binding on the international prize court when established; and, if so, whether there is any written record of such agreement.

MR. MCKINNON WOOD. It is the well-recognized practice of international conferences to entrust to a special committee the drafting of a general act, and of any conventions to be adopted and signed by the plenipotentiaries. Where the report, in which the drafting committee submits to the conference the result of its labors, contains a reasoned commentary elucidating the provisions of such conventions, it becomes, if formally accepted by the conference, an authoritative interpretation of the instruments, and the conventions must thereafter be construed by the signatory powers with reference to the commentary where necessary. The general report of the drafting com-

¹ 21 H. C. Deb., 5. s.. 1704.

mittee of the naval conference was adopted by the conference at its eleventh plenary meeting on the 25th February, 1909, and the written record thereof will be found on page 223 of Blue Book Cd. 4555. If, therefore, the proposed international prize court is set up at The Hague it will be bound, when applying the provisions of the Declaration of London as between the signatories, to construe the text in conformity with the terms of the report.

FEBRUARY 22, 1911.¹

INTERNATIONAL CONVENTIONS (INTERPRETATION).

Mr. Butcher asked the Prime Minister upon what authority the Government relied for the assertion that the report of a drafting committee appointed by an international conference, when such report contains a reasoned commentary elucidating the provisions of a convention signed on behalf of the powers represented at such conference, becomes, if formally accepted by the conference, an authoritative interpretation, binding on the signatory powers, of the instrument so signed; whether any record of such a practice exists in any state paper or other authoritative document issued by the Government of this country or of any of the powers represented by the naval conference in London; and whether he was aware that a view on this subject, contrary to that entertained by His Majesty's Government, is held by such authorities as Professor Ullman of Vienna and Professor Fiore of Naples.

Mr. McKINNON WOOD. It is obvious that if the delegates who are sent by the respective Governments to attend a conference think it desirable to accompany the instrument which they sign by a commentary, which is described in the meetings of the conference as an official commentary, which is accepted by the delegates on that footing, and which is formally adopted at a plenary meeting of the conference, the commentary must be regarded as accepted by the Governments, unless the action of their delegates is disavowed. The object of such a commentary is to explain the meaning of the signed instrument, and to lessen the possibility of such ambiguities arising as are likely to occur subsequently in construing articles which are of necessity drawn up in very concise language; it is in this sense that the commentary becomes an "authoritative interpretation," because it is the explanation of the meaning which the signatories to the convention have placed upon it themselves. I am not aware of any occasion having arisen for the drawing up of a state paper such as is referred to by the honorable and learned member. I am not acquainted with

¹ 21 H. C. Deb., 5. s., 1902.

the precise views which may be entertained on this particular subject by Professor Ullman and by Professor Fiore.

Mr. BUTCHER. If this conference is authoritative why is the report, as well as the convention, not signed by the powers?

Mr. MCKINNON WOOD. The reports have never, in similar cases, been signed by the powers. This report has been accepted by the delegates. There is no previous instance in which the report has been signed by the powers.

DECLARATION OF LONDON.

Mr. Gretton¹ asked the Prime Minister if the Declaration of London will be formally submitted to the Board of Admiralty for approval before it is brought before the forthcoming imperial conference.

The PRIME MINISTER. No, sir; I see no necessity for such reference.

Mr. LEE. May I ask the right honorable gentleman whether, in view of the widespread and genuine uneasiness in regard to the effect of the Declaration, he will reconsider his decision, and cause the provisions of the Declaration to be laid before the Board of Admiralty for full examination and formal report?

FEBRUARY 27, 1911.²

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether there is any case within the last 30 years in which a prize court of any power has condemned a neutral vessel carrying food as lawful prize of war on the ground that food was absolute contraband.

Mr. MCKINNON WOOD. I am not aware of any case in which the vessel itself was condemned on this ground; but the question of the capture of the foodstuffs without proof that they were destined for the naval or military forces is, of course, a different question.

SIR GEORGE ROBERTSON.³ Is it not a certainty that if Great Britain can not maintain her own merchant ships in the great trade routes when at war with a powerful nation, she must be starved into surrender?

¹ Conservative.

² 22 H. C. Deb., 5 s., 4.

³ After some twenty years of distinguished service in His Majesty's Indian possessions, Sir George Robertson returned to England, where he entered political life as a Liberal member for Central Bradford in 1906. He participated in the lively campaign for the naval prize bill, both in and out of Parliament, and contributed generously to the public press in its behalf.

Mr. SPEAKER. That has nothing to do with the question on the paper.

Mr. BUTCHER asked the Secretary of State for Foreign Affairs whether, in view of the fact that the Declaration of London has no binding effect on the powers represented at the naval conference of London unless and until such Declaration is ratified by them, the report of M. Renault would be binding on the powers as an authoritative exposition of the meaning of the Declaration, unless the report were incorporated with the Declaration for the purposes of such ratification.

Mr. MCKINNON WOOD. If the honorable and learned member will refer to the answer which I gave him on the 22d instant he will see the precise effect which His Majesty's Government attribute to the report in question.

Mr. BUTCHER. May I ask the honorable gentleman whether it is intended to submit the report for ratification along with the text of the Declaration?

Mr. MCKINNON WOOD. The honorable and learned gentleman asked me that question before, and I replied to it.

Mr. BUTCHER. What was the answer? I never asked that question.

Mr. MCKINNON WOOD. The honorable and learned gentleman asked a supplementary question. The answer is that we do not contemplate doing so. There is no precedent for doing so. That is the only answer I gave.

Mr. BUTCHER. Am I to understand that if the report is not submitted for ratification, it will be binding on the powers as if it had been?

Mr. MCKINNON WOOD. I have stated very fully what the view of the Government is in regard to the matter, and the reasons why they think the report is binding on the powers without further ratification.

Mr. Eyres-Monsell asked the Secretary of State for Foreign Affairs whether, in the official statements prepared for the London conference of 1908 by Germany, Russia, Japan, and the United States, any claim was made or suggested that food other than preserved provisions suitable for the services of troops might be declared to be absolute contraband by a belligerent when it suited her interests to do so.

Mr. MCKINNON WOOD. I do not agree with the interpretation suggested in the question as regards the four powers named.

Mr. Eyres-Monsell asked the Secretary of State for Foreign Affairs whether M. Jules Ferry, the French Minister of Foreign Affairs, in his communication to the British Government of the 13th March, 1885, stated that the rice which France in her war with China had declared contraband represented imperial tribute

paid in kind and specially applied to the use of soldiers, who received it as part of their wages, and that consequently it was destined for military use.

Mr. McKINNON WOOD. That argument was used by the French Government during the discussion, but they did not pretend that it applied to all the rice of which the importation was prohibited, and in fact it did not so apply. Nor was this their original or principal argument. On the 10th March, 1885, M. Waddington, in a note to Lord Granville, said:

The particular circumstances under which the hostilities against China are carried on have determined my Government to take the step with regard to which your excellency has thought fit to formulate reserves. But the Queen's Government can not be ignorant of these special circumstances of which the French authorities are the best judges, and with regard to which the French courts will have to give an authoritative decision, should occasion arise. The importance of rice in the feeding of the Chinese population and army does not allow my Government to authorize its transport, in the north of China, without the risk of depriving themselves of one of the most powerful means of coercion they have at their disposal.

Mr. Eyres-Monsell asked the Secretary of State for Foreign Affairs whether the Government still holds to the declaration made by Lord Granville on 27th February, 1885, and the 4th April, 1885, to the French Government that Great Britain refused to recognize the claim that rice could be treated generally as contraband of war, and that the British Government would not hold herself bound by any decision of a prize court to this effect.

Mr. McKINNON WOOD. His Majesty's Government still hold the view expressed by Lord Granville. I may point out that a similar difference of view between the two Governments will not arise if the Declaration of London is ratified by them.

Mr. EYRES-MONSELL. May I ask the right honorable gentleman, in view of that being held by His Majesty's Government, whether it was not dangerous to state that the present practice would expose to capture or deliberate destruction food supplies borne to any port of the United Kingdom in neutral vessels in time of war before the Declaration is ratified?

Mr. McKINNON WOOD. I do not know to what the statement of the honorable gentlemen refers. But there is nothing in his statement inconsistent with the reply I have given.

SIR GEORGE ROBERTSON. If the Declaration of London were not to be ratified, is there any way by which Great Britain, as a neutral power, could enforce the rules of her own prize courts on belligerents without, of course, going to war?

Mr. McKINNON WOOD. No, there is not.

Mr. BUTCHER. Did any power take exception to France in 1885; if so, how?

Mr. McKINNON WOOD. Undoubtedly the answer given by Prince Bismarck to the German commercial houses was clearly an indication that Germany was not prepared to protest against the view of France. Prince Bismarck's answer made it clear that he considered that France was within her right. What Germany did was to refuse to remonstrate against the view of France: that was supporting it in a very practical way.

MARCH 2, 1911.¹

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs, whether his attention had been called to the differences of opinion which exist as to the proper meaning of article 33 of the Declaration of London, which declares that—

Les articles de contrebande conditionnelle sont saisissables s'il est établi qu'ils sont destinés à l'usage * * * des administrations de l'état ennemi;

whether the words "administrations de l'état ennemi" are to be construed as excluding all the civil departments of the enemy State; whether such view is in accordance with the illustrations given of the meaning of this article in M. Renault's report; and whether for the elucidation of this subject he will lay upon the table the correspondence which has passed between the Foreign Office and the Bristol branch of the Navy League in continuation of the correspondence between those parties which has been already printed in Cd. 5418, but which did not go beyond the letter of 25th November, 1910, from the Foreign Office to the said Bristol branch.

SIR E. GREY. The words "administrations de l'état ennemi" are expressly declared in the report of the committee of the conference to signify departments of the central government. This necessarily includes its civil departments, but local or municipal bodies are expressly excluded. The later correspondence with the Bristol branch of the Navy League is not worth laying in addition to papers already published, but to remove any doubt on this point I am prepared to lay it.

Mr. Butcher asked the Prime Minister whether, in those cases where the rules of international law as laid down in the Declaration of London differ from the rules of international law as laid down and applied by the prize courts of this country, such new or altered rules could be enforced as against our fellow subjects in this country

¹ 22 H. C. Deb., 5 s., 524.

or in our overseas dominions and possessions without the authority of any act of Parliament.

SIR E. GREY. The Prime Minister has asked me to answer this question. The Declaration of London will be applied by the prize courts in the countries which ratify it as part of the law of nations. The answer to the honorable member's question is, therefore, in the affirmative.

MR. BUTCHER. When it is applied by the prize courts it corresponds with international law and therefore it would require the assent of Parliament.

SIR E. GREY. I understand that the assent of Parliament is not required to enable prize courts to administer international law.

MR. BUTCHER. May I ask whether new laws which are to be enforced upon British subjects within British jurisdiction do not require the sanction of Parliament?

SIR E. GREY. If the honorable member will put down a question as to the powers of prize courts generally, I will endeavor to answer it on the whole point, but I can not answer a wide question of that kind without proper notice.

MARCH 7, 1911.¹

DECLARATION OF LONDON.

Mr. Austen Chamberlain² asked the Secretary of State for Foreign Affairs whether he will circulate for the information of the House a copy of the United States paper entitled "Naval War College. International Law Topics. The Declaration of London of 26th February, 1909. Issued by the Government Printing Office, Washington, 1910."

SIR E. GREY. I have not yet received a copy of the paper in question, which, however, is on its way to the Foreign office. When I have had the opportunity of examining it, I will consider the question of meeting the wish of the right honorable member.

MR. AUSTEN CHAMBERLAIN. I will ask the right honorable baronet to communicate his decision.

¹ 22 H. C. Deb., 5 s., 1005.

² Mr. Chamberlain belonged to the uncompromising wing of the Conservative Party and was a "Die-Hard" in regard to the Parliament bill. During some twenty years of parliamentary life he had been Civil Lord of the Admiralty (1895-1900), Financial Secretary to the Treasury, Postmaster General, and Chancellor of the Exchequer.

HOUSE OF LORDS.

MARCH 8, 1911.¹

DECLARATION OF LONDON.

The EARL OF SELBORNE.² My lords, I rise to ask the Lord President of the Council whether he will lay on the table of the House papers showing the view of the Board of Admiralty on the effect which the establishment of an international prize court of appeal and the Declaration of London would have on the conduct of a naval war by this country?

The LORD PRESIDENT OF THE COUNCIL (Viscount Morley of Blackburn). My lords, in reply to the noble earl, I have to say that the opinions expressed by the admiralty on this subject are not in a form in which their publication would be in the public interest. It would not be desirable—I think the noble earl will agree with me—to make public any views as to the effect of the provisions of the Declaration of London on the conduct of naval operations. To do that would be equivalent to informing a possible enemy of the manner in which the Admiralty might intend to use the powers of blockade or other means of attacking an enemy's commerce. In general terms I may say that the opinion of the Admiralty is that, in existing circumstances, the effect of the establishment of an international court of appeal and of the Declaration of London on this country as a belligerent in the conduct of naval operations would be small and inconsiderable.

Lord Desborough³ rose to call attention to the Declaration of London, and to move for papers. The noble lord said: My lords, I rise to call your lordships' attention to a matter of the most vital importance to this country—namely, the new rules of naval warfare which have been drawn up under the Declaration of London. They affect us primarily as the dwellers in these islands in a particular manner, but they affect the whole of our dominions beyond the seas in a manner almost as vital. The Declaration of London has been considered, and adversely reported upon, by a large number of chambers of commerce, approaching 30 in number, and 10 shipping associations, including the Chamber of Shipping of the United Kingdom, which is the representative chamber of the Kingdom, besides shipping assurance and other bodies. The colonies have

¹ 7 H. L. Deb., 5 s., 325.

² Liberal. The Earl of Selborne had had a long political career; he sat in Parliament from 1882–1895, was Under-Secretary for the Colonies, 1895–1900, and First Lord of the Admiralty, 1900–1905. In this controversy he was clearly acting the part of Lord Lansdowne's Lieutenant.

³ Lord Desborough (Conservative) was president of the London Chamber of Commerce.

vehemently protested their right to be heard, and Australasia has the question down to be debated at the colonial conference. There is a widespread feeling of alarm in business, commercial, and shipping centers; but the replies where they have been given to the representatives of these bodies by the Foreign Office have been on the whole to the effect that those who made them did not understand the present state of the law of nations on the subject or what alterations the Declaration made in it. Well, my lords, this must be due to some inherent vice in chambers of commerce and other such bodies, because not only have they tried their best to understand them, but in many instances have called into their counsel men of acknowledged repute in matters of international law before they made their protests. I sincerely hope that they may now be enlightened on the many points which trouble them. It is a matter which the trader, the commercial man, the shipowner, the underwriter must clearly understand as it affects him so closely.

The Declaration of London is the direct outcome of the Second Peace Conference, which met at The Hague on June 15, 1907, when 45 States were represented by 156 delegates. At this conference 14 documents were passed, of which Great Britain has signed 13 and ratified 9. The one not signed was the convention setting up the international prize court. The resolution proposing the establishment of this international prize court was moved by Baron Marschall von Bieberstein on behalf of the German Government, and its object was to create an international jurisdiction to discuss the legality of captures in maritime war. This would be a high court of justice sitting as a court of appeal, while national tribunals would deliberate in the first instance. This new court of appeal would practically supersede the British prize courts, which have always held such a high place in the estimation of nations for their independence, integrity, and justice, as, indeed, may be said for the other great maritime nations. It is to consist of 15 judges, 9 to form a quorum; the judges appointed by Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia are always to be summoned, and judges and deputy judges are to be appointed by Argentina, Colombia, Turkey, Paraguay, Bolivia, Roumania, Persia, Panama, Costa Rica, Haiti, Guatemala, Brazil, China, Bulgaria, Montenegro, Nicaragua, Cuba, Honduras, Educador, Switzerland, Luxemburg and other maritime countries.

Although the convention set up the prize court as mentioned, the rules according to which it was to decide were left very vague. In the report it says:

The new international prize court is called upon to make the law, and to take into account other principles than those to which are submitted the national

prize court jurisdiction, whose decision is attacked before the international court.

The new court was, in fact, to make the law and the law was to be founded on some new and undefined principles. The report also says—

How is nationality, property, or domicile to be proved? Is it only by the ships' papers or equally by other document produced? We intend to leave the court full power of appreciation.

And again—

Every liberty is to be left to the court as to the appreciation of the various elements furnished to it to determine the conclusion. There is not here a legal system of proofs.

It was felt, however, on further consideration that a court of this character could hardly be set up over the national prize courts of the various countries without some much more definite rules to guide them, and so, on February 27, 1908, a circular letter was addressed to His Majesty's representatives at Berlin, Madrid, Paris, Rome, St. Petersburg, Tokyo, Vienna, Washington, and subsequently The Hague, proposing that a conference should be held in London to determine what the new laws for the international prize court should be, and this conference resulted in the Declaration of London, which we are now considering.

I am far from wishing to decry or run down any attempts to settle international disputes by arbitration, or even to establish such courts as an international prize court, but the court must be competent and the rules should be fair. It must also be remembered that the international prize court and its rules are not in any sense designed for preventing war and all its horrors, as they only come into effect after war has unfortunately broken out, and practically form the rules and regulations under which that war is to be conducted. It is from this point of view that I propose shortly to consider the provisions of the Declaration of London, and to further formulate certain questions which I trust will be met in a manner calculated to remove the apprehension which undoubtedly exists. The importance of the whole subject as regards this country, dependent as it is on the sea for its food and its commerce, cannot be exaggerated. It concerns not only these islands but all our dominions beyond the seas. The provisions of this Declaration affect our national and imperial existence in the most vital manner. I believe it is the most important question before the country at the present time.

Now, my lords, to proceed to the Declaration of London, which appears to me to be more important than the international prize court, important as that is. The international prize court does not come into operation till after the national prize courts have adjudicated.

cated, and then only affects the individual who claims that his property has been wrongfully seized or destroyed. The harm to the nation will have been done; the individual owner of the ship and cargo may eventually receive compensation, but it is a question even then whether it will be worth his while to claim it. He will be appealing against the decision of a national prize court; at the international prize court he will be fighting a nation. He will have to engage counsel in a language to be determined by that international prize court; he will have to face a very large expenditure, perhaps even the expenses of a commission of inquiry; he can only, if successful, get the bare value of what he has lost, and from this various deductions are apparently to be made. It is doubtful whether this appeal will be worth his while; it probably will not unless enormous sums are at stake.

But, as it appears to me, this is not the important question. The important question is the establishment of these new rules contained in this document, the Declaration of London, which embody the new conditions of naval warfare. These do matter, and they matter most of all to us, because we depend on sea commerce for our national existence. There are certain points on which I hope we shall get definite information from His Majesty's Government—as the commercial and mercantile community is in great doubt about them, and these doubts have not yet been removed—before we come to the Declaration itself. The first of all these is whether the Declaration is considered to be binding on the signatory powers whether the international prize court is set up or not. The preliminary provision of the Declaration states—

The signatory powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

That is a very definite statement to be committed to, and it is further enforced by article 66, which says—

The signatory powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will, therefore, issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

The meaning of this seems pretty plain—namely, that if this Declaration is ratified we in these islands, and our colonies who have not as yet been consulted, are definitely committed to all the provisions of the Declaration, which it is stated are to be taken as a whole. I know that great authorities take a different

view. For instance, Mr. Gibson Bowles,¹ one of the few people in this country who have mastered the 2,000 pages of the French Blue Book relating to this matter, takes the view that the establishment of the prize court is the king pin of the situation, and that if the prize court is not set up the Declaration falls to the ground. I hope that His Majesty's Government will make this point quite clear.

There is another question I should like to ask before briefly discussing a few points of the Declaration, and it is one on which there has been a good deal of controversy among international lawyers in the public press. It is this: Is the report of Mr. Renault, which is a running commentary on each article of the Declaration, to be taken as authoritative? From some points of view it seems to make the Declaration better; from other points of view it seems to make it worse; while yet, again, from others it seems difficult to reconcile it with the Declaration at all. The Secretary of State for Foreign Affairs has stated that—

The international prize court, if set up, will be bound to construe the text in conformity with the terms of the report.

Sir Thomes Barclay, at the summer conference of the International Law Association, said:

I have never heard of any such suggestion being made by a practical lawyer.

And Prof. Holland has stated that—

Such a report as that which accompanies the Declaration of London has no claim to the sort of interpretative authority which has been attributed to it, nor is it desirable that the requisite steps should be taken to give it that authority. It would be calamitous should a practice be introduced of attempting to cure the imperfect expression of a treaty by tacking on to it an equally authoritative reasoned commentary.

And he goes on to say—

The fact is that the vitally important questions of theory and practice raised by the convention and Declaration need calmer and better instructed discussion than they have yet received. Ought they not to be referred to a royal commission, on which should be placed representatives of the navy and merchant service, of the corn trade, and of the colonies, together with international lawyers, in touch with the views of their continental colleagues?

Be that as it may, it is absolutely impossible to gauge the effects of this new Declaration unless one knows whether the report in the shape of a running commentary by M. Renault is authoritative or not; and, if it is authoritative, perhaps the suggestion of Prof. Westlake, Mr. Cohen, and others, that it should be ratified by all the

¹ One of the most vigorous opponents of the naval prize bill was Thomas Gibson Bowles, the late member from King's Lynn—Conservative, 1892–1906: Liberal, 1910—and author of *Maritime warfare, The Declaration of Paris, 1856, and Sea law and sea power as they would be affected by recent proposals; with reasons against those proposals*. He contributed generously to *The Times* and current periodicals, and addressed many meetings held to protest against the passage of the bill and the ratification of the Declaration of London.

powers concerned, should be carried out. A categorical answer from the Government on this point appears to be absolutely necessary.

As regards the Declaration itself, I propose to confine my remarks to three main points raised by the various chambers of commerce in their protests to the Foreign Office. These protests have been answered at some length by the Foreign Office, which has taken up the view that the Chambers did not understand international law or the law of nations as now very generally interpreted, and also that they had misconceived the alterations introduced into that generally accepted law by this new code. That, of course, may be so, and I only hope that this discussion may do something to clear away these misconceptions. In these islands we can not afford to have misconceptions on sea laws which affect our national existence. The merchants, traders, shipowners, corn dealers, and underwriters, nay even the people at large, must understand. These matters affect the business man; they are not religious mysteries, or murmured incantations of priests behind a veil. The Declaration, when ratified, is to hold good for 12 years; none of the signatory powers can denounce it within that time. I am no enemy of international agreements, of arbitration courts, or of proposals for limiting armaments, and I am as alive to the horrors of war as any member of this Chamber; but international agreements should be fair and not one-sided, otherwise they may provoke the very war which all the friends of peace wish to avoid. This Declaration and the international prize court have nothing to do with peace; they only take effect when war has actually broken out.

My lords, the Declaration of London is divided into 9 chapters, and concludes with some final provisions; there are 71 articles altogether. The chapters dealing with blockade in time of war, with unneutral service, with the transfer of the neutral flag, enemy character, convoy, resistance to search, and compensation, I propose to leave to others who are more capable of pointing out where they are injurious, if they are injurious, to the interests of this country. I shall confine my criticisms to three main points—first, the effect of the Declaration in exposing to capture or deliberate destruction of food supplies borne to this country in time of war in neutral vessels; secondly, the admission of the principle of destruction of neutral prizes; and, thirdly, the absence of any provision in the Declaration for preventing the conversion of merchant vessels into commerce destroyers on the high seas.

As regards the first point, the question of food supplies, it should be observed that there are three divisions of articles made by the Declaration. The first is absolute contraband, the second conditional contraband, and the third the free list. Articles exclu-

sively used for war are absolute contraband. The free list contains articles which may not be declared contraband of war, and which, with the notable exception of cotton and hemp, never have been declared contraband of war. But what concerns us most is the list of articles susceptible of use in war as well as for purposes of peace, which may, without notice, be treated as contraband of war under the name of "conditional contraband." The list of conditional contraband is given in article 24 of the Declaration, and is as follows: (1) Foodstuffs; (2) forage and grain suitable for feeding animals; (3) clothing, fabrics for clothing, and boots and shoes suitable for use in war; (4) gold and silver in coin or bullion and paper money; (5) vehicles of all kinds available for use in war, and their component parts; (6) vessels, craft and boats of all kinds, floating docks, parts of docks and their component parts; (7) railway material both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones; (8) balloons and flying machines, and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines; (9) fuel, lubricants; (10) powder and explosives not specially prepared for use in war; (11) barbed wire and implements for fixing and cutting the same; (12) horseshoes and shoeing materials; (13) harness and saddlery; (14) field glasses, telescopes, chronometers, and all kinds of nautical instruments. This list can, under article 25, be added to by a declaration.

My lords, this list is a comprehensive one, but I suppose the first article—foodstuffs—is to us living in islands which import food at the appalling rate of £484 a minute is the most important, and we must see what the Declaration has to say on the subject of the importation of conditional contraband. Under article 34 of the Declaration neutral ships are liable to capture, and under certain circumstances to destruction of the goods are consigned to enemy authorities, or to a contractor established in the enemy country, who as a matter of common knowledge supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place "serving as a base for the armed forces of the enemy." This article sets forth where neutral ships may not convey conditional contraband to. It is the most disputed article in the Declaration as regards its precise meaning. "Enemy authorities," "contractor," "place serving as a base for the armed forces of the enemy," require the most careful definition. It has been frequently pointed out that "contractor" is a very limited translation of the authentic word, which is *commercant*, or trader, and I suppose there are a few great traders in this country who are absolutely free from the imputation of supply-

ing the authorities with articles of conditional contraband. "Enemy" is also ambiguous in this article. But the sentence which has caused the most alarm is "other place serving as a base for the armed forces of the enemy." These islands are small, and there is no port suitable for the reception of grain ships which could not serve as a base for our armed forces, or which, as a matter of fact, does not do so. The commentary, or report, of M. Renault, whether authoritative or not, seems to make the matter worse. He says it may be a fortified place belonging to the enemy, or a place used as a base whether of operations "or of supply," for the armed forces of the enemy. This seems to adopt the German view, for articles 34, 35, and 49 are taken almost in their entirety from the German report laid before the London conference.

The chambers of commerce and others representing the trading and shipping interests of this country are much alarmed by these articles. It appears to them that foodstuffs and other articles of conditional contraband would, when shipped to any port in the United Kingdom, be liable to capture, and under article 49 the neutral vessels carrying them would be liable to be sunk. They would be grateful if the Government would name any ports in this country which they consider at the present time as above suspicion—any ports to which, if this country were at war, neutral vessels could convey foodstuffs and the other articles of conditional contraband. The Chamber of Commerce of Glasgow asked the Foreign Office whether Glasgow would be considered a free port, but the answer, put shortly, was that the question would have to be decided by the international prize court sitting at The Hague probably long after the war was over. The same uncertainty would also exist when this country was a neutral. I am not sure indeed, that under article 34 it would not be the duty of a hostile commander to capture any neutral vessels conveying conditional contraband to any port in this country. The best and safest manner to wage warfare on this country is to cut off her supplies, especially of food, and the sinking of neutral vessels carrying foodstuffs to this country would inevitably cause a serious rise in prices of food and freight and probably create a panic. And, indeed, he would run no great risks in comparison with the objects to be secured. The owner of the cargo and ship would have the onus put upon him of proving before the international prize court that the port for which he was destined could not serve as a basis of supply for the armed forces of the enemy, and a negative is very difficult to prove.

I am well aware that the supporters of the Declaration argue, with regard to foodstuffs, that this country would be no worse off under the Declaration than it is as matters stand now. They maintain that food can be declared contraband at the present time. But

that is not so. As the Right Hon. James Bryce stated in the House of Commons on August 11, 1904:

Food, by the general consent of nations, was not contraband of war unless it is clearly proved to be intended for military or naval purposes. In 1885 a demand was made by the French Government to treat rice as contraband of war. Lord Granville protested in a most energetic way, and stated that he would not recognize the decision of French prize courts which treated rice under that category, and in point of fact rice never was treated as contraband of war.

It may also be noted that, as regards this particular instance, in the French Chamber it was stated that rice was made contraband not as the food of the people, but because it was used as tribute and as payment for the Chinese soldiers. Many more quotations could be given against the thesis that the food of the people can be declared contraband of war.

The worst of article 34 is that while good excuse is given for foodstuffs coming to this country in neutral vessels in time of war being seized and even destroyed, article 35 states that conditional contraband is not liable to capture when it is to be discharged in an intervening neutral port. That is to say, if we were to be at war with a continental power or powers neutral vessels carrying conditional contraband, which includes all the articles I have already enumerated, could be, as I understand it, addressed straight to their belligerent forces, but we could not interfere with it as long as it was to be discharged at a neutral intervening port. Our cruisers might meet them, but they could only wish them godspeed. These two articles taken together are grossly unfair to us as an island power. We have no neutral ports to draw these supplies from overland. All our ports would be suspect. It is said, indeed, that neutral vessels could take our food supplies to France if France were a neutral, which is, perhaps improbable. But grain comes over now in big ships. There are no facilities for storing and transshipping large quantities of grain in the northern French ports, and Antwerp and Rotterdam, where there are facilities, might not be geographically very safe points for this operation, which in any case must largely increase the cost of the commodity. Articles 34 and 35 imperil our food supplies and other articles of conditional contraband, while they secure them for possible continental enemies when carried in neutral ships. It is impossible for the captain of a neutral vessel carrying foodstuffs to any port in England to satisfy the commander of a hostile cruiser as to the destination of his cargo. For one thing, he does not know. Under modern conditions cargoes of grain change hands on the high seas, and it is impossible to prove that their destination is what is termed innocent. The hostile commander will in that case either capture or perhaps sink the ship, and leave the talking to be done afterwards at the international prize court.

Now, my lords, I come to the second point in my criticism, the admission of the principle of destruction of neutral prizes which is contained in article 49. This is also one of the points submitted by the German representatives and agreed to in the Declaration. Article 48 says:

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such a port as is proper for the determination thereof of all questions concerning the validity of the capture.

That is quite right and in accordance with the hitherto accepted law of nations, and is fully borne out by the Secretary of State for Foreign Affairs in his letter to Sir Edward Fry at The Hague conference, in which he said:

As regards the sinking of neutral prizes, which gave rise to so much feeling in this country during the Russo-Japanese War, Great Britain has always maintained that the right to destroy is confined to enemy vessels only, and this view is favored by other powers. Concerning the right to destroy captured neutral vessels, the view hitherto taken by the greater naval powers has been that, in the event of it being impossible to bring in a vessel for adjudication, she must be released. You should urge the maintenance of the doctrine upon this subject which British prize courts have for at least 200 years held to be the law.

But all that goes to the board in the next article, No. 49, which says:

As an exception a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

Thus article 48 says you may not sink neutral vessels, while article 49 says you may if you like. The commander of the warship is the judge on the spot as to whether the neutral vessel is carrying contraband, and the operations in which he is engaged is commerce destroying, and he would not be doing his duty to his country if he allowed anything to interfere with the success of these operations, and so he is bound to take full advantage of article 49. The Declaration allows this innovation on the practice of 200 years; the signatory powers can not protest; the only appeal is to the international prize court which I have already alluded to. Before the Declaration the neutral power would have protested energetically if her ships had been sunk, but now she must wait for the individuals who have suffered to prove a negative in an undetermined language in the international prize court. If we were at war and the United States were neutral much of our grain from North America would come here in United States ships. Under articles 34 and 49 these ships may be sunk, and I do not see how the United States, if she ratifies this treaty, can protest, and the same remark applies to the other signatory powers. In this respect, instead of being better off under

this Declaration, as the Under-Secretary of State avers, we are a great deal worse off than we were before.

The last of the three points to which I desire to call attention is the absence of any provision in the Declaration for preventing the conversion of merchant vessels into commerce destroyers on the high seas. This is a most vital consideration as regards this country, which owns 50 per cent of the sea carrying trade of the world. The first article of the Treaty of Paris of 1856 is: "Privateering is and remains abolished"; but attempts are being made to revive it in a worse form than has ever been experienced. The matter can not be put plainer than it is by the Secretary of State for Foreign Affairs in his instructions to our representative. On the eve of the conference he wrote:

Apart from the important question of principle involved, there are two practical considerations which have chiefly weighed with His Majesty's Government in refusing to recognize the right to convert merchant vessels into ships of war on the high seas. One is the facility which such a right would give to the captain of a merchant vessel qualified to act as a warship to seize enemy or neutral ships without warning. The other is that enemy vessels under the mercantile flag, but suitable for conversion, would be able, as merchantmen, to claim and obtain in neutral ports all the hospitality and privileges which would, under the accepted rules of naval warfare, be denied to them if they were warships. Availing herself of these advantages, such a vessel, found in distant waters after the outbreak of hostilities, would be enabled to pass from one neutral port to another until she reached the particular point in her voyage where she might most conveniently be converted into a commerce destroyer.

Surely this is a very grave omission in the new code of sea warfare. The matter has been left undetermined. Germany, France, and Russia were in favor of conversion on the high seas, and the United States, Great Britain, Japan, Italy, Austria, Holland, and Spain decided against it. Is the international prize court to decide for or against? In the Russo-Japanese War this country protested against the Russian Volunteer Fleet coming as unarmed ships through the Dardanelles and acting as commerce destroyers, and Lord Lansdowne's protest was at that time upheld. Although we own, roughly speaking, one-half of the sea trade of the world our ocean highways are very inadequately policed. I believe that from Vancouver to Cape Horn we have no cruisers capable of defending it if attacked by swift converted liners. Our 27 cruisers free for that purpose are quite inadequate in the other parts of the world, and we should want an enormous addition to our commerce protectors if this right of conversion on the high seas is to be permitted.

My lords, I have tried, very briefly, to point out the reasons why, in the opinion as expressed by large sections of our business community, the Declaration of London should not be ratified. Although I am most strongly in favor of international agreements which have as their end the settlement of disputes by arbitration and not by

war, yet I believe that this Declaration is so grossly unfair that it will rather invite war against this country than prevent it. By the conversion at sea of peaceful vessels into commerce destroyers without notice on the high seas, by the sanction of the destruction of neutral prizes, and by articles 33 and 34 which imperil our food supplies in neutral ships, we are exposing ourselves to new and most grave dangers. The Declaration of London constitutes the greatest peril to us as an island power, and I trust it will never come into operation.

I should like to press for an answer to the three questions I have put. Is the Declaration binding, if signed, on the signatory powers, supposing the international prize court is not set up? Is the commentary of M. Renault to be considered as an authoritative interpretation of the Declaration? And will the Government name the ports in this country to which neutral vessels carrying foodstuffs and other conditional contraband would have free access? In conclusion, I may say that on the whole the concluding paragraph of the Declaration is the one with which I am in most accord—namely, “Done at London,” for that is where we have been done, and on February 26, 1909.

My noble friend, Lord Lamington, who has a motion on the paper to refer this matter to a royal commission, is unfortunately prevented by indisposition from being in his place, and therefore on his behalf, if it is consonant with the rules of the House, I should like to move the motion.

Moved to resolve, That, in the opinion of this House it is desirable that a royal commission be appointed to report on the advisability of this country agreeing to the terms of the Declaration of London.¹ (Lord Desborough.)

The EARLE OF DESART.² My lords, I think I am entitled to ask this evening for a special measure of that indulgence which your lordships always so generously and freely accord to a member of this House who addresses you for the first time, because in my first essay in political and parliamentary speech I have to deal with a question of great complexity and difficulty, and one which has been the subject of much criticism. In putting before your lordships my views, which I feel strongly and honestly, I wish to say that I do not speak in any sense for the Government. The noble lord who has just sat down will, I am sure, not think me discourteous if I do not immediately touch on the particular questions he has raised, though I shall have to deal with them later in a different order from that in which he has placed them before the House.

¹ A similar resolution was introduced into the House of Commons by Mr. Butcher on June 29. See *post*, p. 261.

² Lord Desart was the British plenipotentiary at the naval conference at London in 1908-9 and a British member of the International Court of Arbitration.

My position is not quite an ordinary one. I am interested more than most people in this Declaration, because I had the honor, under the instructions and authority of His Majesty's Government, of presiding as British plenipotentiary at the conference of London which drew up the articles of the Declaration, and at the conclusion of the discussions I had the satisfaction of knowing that the result was approved by His Majesty's Government. I have been told, though I do not think it matters much, that personal attacks have been made on the actual delegates. I am quite sure the noble lords on both front benches will agree that I need not concern myself with these attacks, because it is well established that when a public servant is employed to act by his political superiors blame or approval for him is to come from them and the responsibility is theirs if they adopt his conclusions and act upon them. I only say that because of my colleagues who worked loyally with me in pursuance of the instructions they received, and who, I think, ought not to be subject to comment of that character.

I myself have carefully abstained from taking any part in the discussions that have raged round this document and round the conditions under which the international prize court was proposed to be established. I have carefully abstained from newspaper correspondence and from attending gatherings to which I have been invited at which the subject was discussed, but I hope I am not doing anything wrong in addressing your lordships to-night. I am no longer an official, and with the knowledge I necessarily have of how the conclusions were reached I think it is almost a duty to afford such explanations as I can make, by going through the Declaration, avoiding as far as possible a controversial tone, and merely commenting on what seems to me to be the effect of the various provisions embodied in the Declaration. The difficulty I have found in considering what I should say to-night lies in the great mass of the material, and in the consciousness that the subject can not be familiar to more than a small number of your lordships, and, indeed, the knowledge of it is not easily to be acquired.

We who have been engaged in this task, not merely at the time of the Declaration but long before it, have endeavored to consider the conditions under which naval warfare would now be waged, how they would operate to the advantage or disadvantage of this country, and, lawyers though some of us were, to try and draw practical conclusions as to the results both of the existing condition of things and of the provisions that will be found in the Declaration. I had the advantage of being assisted in those labors by the then Director of Naval Intelligence, Rear-Admiral Slade, now commander-in-chief in the East Indies, and by the Secretary to the Imperial Council of Defense, both naval officers of large experience who had studied this subject for

many years, and to whom I can never sufficiently express my indebtedness. My colleagues of the Foreign Office were also familiar with the conditions, and they afforded me equally valuable assistance. We took instructions from time to time on points that arose, and we had, I believe, in all the more difficult and crucial questions the direct authority of the representatives of the Government in the course we adopted at those moments.

The outcome was this Declaration; and I would like, before I embark upon it, to say a few words about the light in which I think it ought to be considered. You can not, it seems to me, take the Declaration standing by itself and say, "That is good; that is bad; and as there is something bad in it we won't have it." What you have to do is to try to see how the existing conditions really work out in practice, to see what they really are, to see how far the rules—and it is not very far that rules exist at all on many points—would operate in time of war in regard to the interests of this country, whether as belligerents or neutrals, and, finally, how the Declaration itself would work out by comparison. That is, I think, the only standpoint you can take in order to judge whether, first, the thing is in itself an advance in international law, and, most important of all, whether it does injure our country as belligerent or neutral. There can be no question that, whatever advantage it might be in some cases to us as neutrals as regards our trade, if in order to gain that advantage we had to make any sacrifice of any practicable belligerent right we now possess and can exercise, the neutral interest must go. There is no doubt, I think, about that.

When I suggest that the provisions of the Declaration must be compared with the existing state of things I do not think that we can reasonably go back to the great wars of the eighteenth and nineteenth centuries; because the conditions, not only of trade, but in all ways, are totally different owing to the Declaration of Paris. Whether that Declaration was wisely adopted by this country or not is a matter on which different people may have different opinions. Mr. Bowles, to whom the noble lord referred, has strong views on that matter. I do not agree with him on many things, but on that point I very largely agree with him. I do not, however, see how it is possible to contemplate that we could go back upon it. Practically every nation in the world of any importance has accepted it. I know that the United States is said to be an exception; but it is really not an exception at all. The reason it was not accepted by the United States at the time was because of their objection to privateering being forbidden. They had no objection to the other rules; and since that time, being no longer dependent on their mercantile population and their mercantile ships to act for them in time of war, they have adopted it in their recent war with Spain. It is

impossible to suppose that any plenipotentiary of the United States could have signed and agreed to the document under consideration without accepting the Declaration of Paris.

This question has called forth a great deal of attention in the newspapers, and some writers seem to think that we have given up our right to capture the enemy's ships. That is not so. The right to capture the enemy's ships has not been touched by anything, and it is one of our most valuable weapons of war, because so long as we have the command of the sea we can practically after a short time exclude the enemy's merchant flag from the sea altogether. It is a weapon of great pressure on some countries, and it is an important factor for us in a naval war. I am not quite sure how you could have avoided the criticisms that have been made by the noble lord of the constitution of the court. It is better to have an appeal from an enemy's prize court than to depend on diplomatic representation when you have been wronged. It must be of advantage to a neutral to go to a court which is more impartial than the belligerents' prize court, the only alternative.

The noble lord referred to the independence of prize courts. That is quite true about our prize courts and those of the United States, but it is not really true of foreign prize courts. A great number of them act, quite properly under their system, according to rules laid down by the executive very often at the beginning of the war for that war. Therefore in a sense you might be at a disadvantage as a belligerent, because, supposing in many instances our rules were more lenient to a neutral than rules laid down by an enemy, we should in some cases release prize prizes that we had taken, whereas the enemy's court would condemn prizes they had taken in precisely the same circumstances. Therefore this is, at any rate, a more impartial tribunal than you would get in the enemy's prize court. As to the constitution there is always a majority of the great powers, and I do not accept the idea, if we do succeed in establishing rules that ought to be administered by an international court, that those rules would, in the face of all Europe, be misapplied. It would be a great responsibility. It is, of course, a matter of opinion, but I do not think those laws would be misapplied. If they were, I think the feelings of neutrals would be very strong, and I can not help thinking that, as the majority of the judges would be representatives of neutral nations, there really is not much peril of their going wrong in that direction. As probably those of your lordships who have read the international prize court convention are aware, the cases subject to appeal are very limited.

When the convention was agreed to by the representatives of the powers at The Hague and transmitted here it was felt that it was impossible that it should be ratified by this country until some rules

were made which it should administer. It was left incomplete in the convention through the absolute impossibility of going any further in the time at the disposal of the representatives. As it stood they were to apply rules of international law, and, where they failed, the principles of justice and equity; but, left thus vague, it was not a tribunal we could possibly approach. The result was that Sir E. Grey invited the great European powers, the United States, and Japan to a conference, taking certain specific points which they had to discuss, with a view, if possible, of framing rules for the guidance of the court. The conference met and formulated the Declaration of London, annexing to it an explanatory report, which has been the subject of a good deal of comment by my noble friend. I think it is important to know whether it is an authoritative document which will guide prize courts in their decisions. It is not altogether a question of law; to a large extent it is a question of fact; and when we stated in our report that we thought it was a document that would be so treated by the international prize courts on the Continent we thought that we were speaking in accordance with fact. I still think so.

Naturally I have been impressed by the correspondence I have read in the newspapers between Professor Holland and Professor Westlake, who take different views upon the subject. They are men of the greatest eminence, and men to whose views I should defer if I could. But it has struck me that all the letters in the newspapers were rather based on what I would call the English reasoning, the view taken in English courts of documents that might purport to be explanatory but were not parts of the actual documents under consideration. What is important is not what are the views our courts would adopt of it, but what view other prize courts would take of it, and the majority of those would be continental courts, and, generally speaking, would adopt the continental system, which I think Japan also adopts. I ventured, in these circumstances, to communicate with a friend of mine—I am not, unfortunately, at liberty to mention his name, but he holds a very high position among international lawyers and is a gentleman whose name would carry weight—and I asked him to let me know what his opinion was on the subject. I will read to your lordships a translation—he is a French lawyer—of what he wrote to me:

In my opinion there is no doubt that the report which accompanies the Declaration of London will be considered by continental prize courts as the official commentary of the Declaration itself. The circumstances in which the report was presented show that it must (ought to) be so. Not only was the report unanimously agreed by the drafting committee on which all the signatory powers were represented, but it was also submitted to the conference itself in full session, and by it formally accepted. The signatories have adopted the articles of the Declaration as interpreted by the report and with

the meaning given them thereby. It constitutes a whole, the parts of which can not be separated without a breach of the agreement which was attached. As is expressly stated, the report was not made to satisfy the friendly curiosity of international lawyers but to serve as a guide for the administrative, military, and judicial authorities who might have to apply its provisions. I do not see how that which was in the minds of all could have been more clearly expressed. There is nothing in common between such a report, the work of the whole conference, and the preliminary explanations (or preamble) which might precede an ordinary law, to which the courts might give the force which they thought right. I do not wish to touch on delicate ground, but it seems to me that it was not a case of endeavoring to provide an interpretation in accordance with the practice of English courts. It does not relate to an act of Parliament, but to an international convention which should be taken in the sense in which it was understood by the signatories; and, as I have explained above, the intention of the signatories to adopt it as an approved commentary is beyond question. It is the strict duty of all the authorities who have to apply the convention to conform to it.

That is the opinion of an eminent man, and his view I myself believe represents what would be the ordinary practice of the international court. I think the prize courts on the Continent would treat it almost or quite as having conventional force.

The powers were, before the meeting of the conference, invited to submit memoranda or statements of their views on the rules and the questions raised for discussion. They did so, and, while there was a certain unity of principle to be traced running through the various memoranda the divergencies in regard to practice, or supposed practice, were very serious indeed. I confess that at that time I had very little hope of any issue coming from our meeting. It still seems to me very advantageous to neutrals that, if it could possibly be attained with equity and justice, they should be able to know as nearly as might be what they could do at the outbreak of war, what they could carry, and what perils they might avoid. From the belligerents' point of view I am disposed to think that rules are also, if they can be reached and if they are proper rules, a great advantage, because if a belligerent acts in accordance with such rules a neutral whose interests he may affect can have no grievance or reason for threatening war or making war with the belligerent of whose conduct he complains except in extreme cases of abuse of powers.

The risk of war has been sometimes incurred through the incautious act of a naval officer. If he can have any clear rules for his guidance as to dealing with neutrals it is to his advantage, because it lessens the risk of increasing the area of war. I regret very much that the noble marquess the leader of the opposition is not here to-night, because he could speak with great force and authority on this point. Our experience during the Russo-Japanese War very strongly illustrates that point. There were cases then in which we certainly thought the action taken by Russia was outside the legitimate and

proper exercise of her powers. We remonstrated, in some cases successfully and in others not. But her treatment of neutral ships was extremely instructive as to the position in which we stand now in a naval war, whether as neutrals or belligerents.

There is another aspect of the matter which should not be lost sight of in considering this question as a whole, and that is whether, even if we should wish to do so, we could now, as we could at the end of the eighteenth and beginning of the nineteenth centuries, enforce any views which we held against the rest of the world. Your lordships will remember that at that time outside the belligerents there were not any very strong naval powers and we had hardly any powerful neutrals to consider, and there were moments during those long wars when we certainly did not consider neutrals. The danger of that was illustrated when we were asserting our belligerent rights against neutrals to the utmost in 1812. There was one neutral—the United States of America—which was provoked into a war, one on which we at least can look back with no satisfaction, and which produced distrust which is only now dying and in many parts of the United States of America is not dead. But if there was one neutral then who was of importance to us there are many now; and I do not think, even if we desired it, which I am sure we should not, we could now play the part of *Athanasius contra mundum*.

I owe your lordships an apology for speaking at such length before actually coming to the provisions of the Declaration, but this is a matter which can not be very well known to all your lordships and therefore I thought some little preliminary history, if not very valuable, would at least to some extent illustrate what followed. I should like to say that I am in no sense a spokesman for the Government. I do not know what they are going to say. But I am conscientiously and honestly a supporter of the ratification of the Declaration. I believe we shall benefit by it largely as neutrals, and I believe we shall not sacrifice one single belligerent right. In giving my reasons for that view I will confine myself to those points which have been mainly the subject of criticism—namely, those dealing with blockade, contraband, the sinking of neutral prizes, and the absence from the Declaration of any provision as to the conversion of merchant ships at sea. At The Hague Conference Sir Edward Fry, a man who does not speak lightly, said:

The international law of to-day is hardly anything but a chaos of opinions, often contradictory, and decisions of national courts based on national laws.

With regard to blockade, I read in one newspaper that we were giving everything away. I am going to suggest to your lordships that we have given away nothing, but that we have gained something. Nearly all the rules as to blockade are really practically in accordance with our own law. Looking to history, to the limitation of our theo-

retical rule and its working in practice, as well as to the wide limits which may be included in the "area of operations of the warships detailed to render the blockade effective," the result is that clause 17 in effect means, if not all that might be covered by the old principle, all that it was found in practice could be effectually put in force thereunder, and in this respect Great Britain has in no sense weakened her effective power of blockade, while she has obtained almost complete acceptance of her principles, and complete abandonment of the French rule of notification and of the continental theory of definite lines of blockade.

It has been said that in accepting the proposal that ships should only be captured for breach of blockade inside the area of operations of the blockading squadron we have made a material and important concession. That I deny. Under our existing rules a ship would not be condemned if she had an alternative destination and though she might have started for the blockaded port had abandoned the intention of going there. Under modern conditions she would get orders at the last moment by telegraph. She would never commit herself to the intention to break blockade in the earliest stage of her voyage. There are 88 cases in the English books of condemnation; of these 88 cases there was not one single one in which the ship was not condemned except under conditions in which I contend she would inevitably have been condemned under the provisions of the Declaration. I should qualify that by saying there were 4 cases, and 4 only, in which the exact locality of capture was not certain. Therefore, through all these long wars we never condemned a ship for breach of blockade unless she was close to the blockaded port or coast. It seems to me that we have secured under the Declaration exactly what we want. We could not accept the mileage limitation suggested by some of the powers because the conditions of blockade vary. The only condition of a blockade is that it must be effective, and the only test of the area is whether it makes an effective blockade. The report is, of course, of great value as illustrating that, but personally I submit that under the Declaration—report or no report—it is quite clear that the area is a perfectly loose term only limited by what is necessary for the effectiveness of the blockade, and a naval officer would not make a larger area than he wanted because he would require more ships. His object would be to blockade with the least force necessary to make it efficient.

I do not say much about egress, because I do not think it is a very important point. As a matter of fact, I believe there are only one or two cases of egress in our books at all; but nobody would detach a man-of-war for the purpose of intercepting a neutral ship, if she was not doing anything to injure us. I would make one general observation about blockade which might induce your lordships to think I

need not have dwelt upon these considerations so much. The observation I desire to make is that a ship here or there is not of much importance. In a blockade now the principal object will be to bring economic pressure to bear on your enemy and prevent ordinary trade going to his own ports, and one or two ships coming in or out would make little difference. That would be an instrument of very large economic pressure indeed, because I am told that land transport is something like ten times as expensive as sea transport and that would bear very hardly on those traders who are mainly accustomed to bring goods in by sea. That view of the matter was illustrated by the Japanese War, in which the fleet captured some junks which were carrying stray cargo and dispatches, but there was no importance in those captures.

Now I come to the question of contraband. I will not say it is the most important, but it touches so many matters—such as the destruction of neutral property—that it becomes really the central feature of the Declaration. The noble lord, Lord Desborough, quoted, quite properly, a number of commercial associations that feel very apprehensive about the adoption of the Declaration. I should like, if I may, to read a statement made by the chairman of the Liverpool Steamship Owners' Association. He states, and I think it probably would be accepted by the noble Lord himself, that—

Neutral traders feel more and more the want of a definite international code stating with exactness their rights and liabilities in the presence of naval warfare, and they have suffered more and more from the want of some tribunal more impartial than the prize courts of their captors to decide the questions that must arise in every naval war between the neutral traders and the belligerents.

Before I proceed with contraband, I should like to make a few general observations on the question of food supply. It will be admitted that our food supply is only safe in time of war if we can protect our own ships. If we can not do that, we shall not be sufficiently supplied by neutrals. I am quite sure it is so. I am told that the neutral ships that would be available could not carry food supplies sufficient to feed us. We must carry our own stuff in our own ships. In one sense the food carried in neutral ships is, I would not say of no importance, but of relatively small importance. What is important is that our own ships should get through. There might be moments when the import of grain or food in neutral ships might be of real importance to us for a time, but I think that the provisions as to contraband and continuous voyage do a great deal to insure that supply and do nothing whatever to check it. With regard to the fear as to the right to make additions to the lists of absolute and conditional contraband, I would point out that they are limited, first, as to things capable of use in war, and, secondly, things capable of

use for purposes of war or peace. In any case, if a neutral is found with contraband on board and had not received notification, she would be compensated for any destruction of contraband. That is as regards neutrals.

With respect to the criticisms that have been made on articles 33 and 34, I do not think they bear the interpretation that has been put upon them by the noble lord. Article 33 reads:

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a Government department of the enemy State, unless in this latter case the circumstances show that the goods can not in fact be used for the purposes of the war in progress.

I do not think that any real exception can be taken to that article, because, for reasons that I shall give, I think this class of goods with this destination has always been held to be contraband. I find in the older books the word used is "contraband." The distinction between conditional and absolute contraband had hardly been developed as it is now adopted by our prize courts, but, I am afraid, not altogether by other prize courts. Article 34 creates certain presumptions as to destination, and sets out certain proofs which may be required. I should like to say about that, that I do not think those presumptions are as perilous as has been suggested. Clearly it can not be an extension of the principle that the destination must be to a department of the enemy, of the enemy's forces, and, assuming I am right, contraband with that destination would be capable of condemnation. If these goods are sent to a trader—I will not use the word "contractor," because there is a doubt about the translation—who notoriously supplies the enemy's Government with these goods, that seems to me a reasonable presumption.

With regard to the word "base," I would only say that it is to some extent a word of art. We may not know exactly in the first instance, what a naval commander might consider to be a "base" in stopping a ship, or exactly what a continental prize court of appeal might hold to be a "base." But the Declaration makes no real difference in this respect. We are in exactly the same position at the present time. The naval commander would act in precisely the same way; a belligerent would act in precisely the same way; the only difference would be that there would be no international appeal court to go to if you were dissatisfied with the action of the naval commander. We think, therefore, that those presumptions do not justify all the observations that have been made about them from time to time, and by my noble friend to-night.

I should like to touch on what is, perhaps, in one sense the most important matter that has been raised in connection with this question of conditional contraband—namely, the application of the doc-

trine of continuous voyage, or, as I prefer to call it, ultimate destination. Now it has been said, and said very often, that we have obtained the doctrine of continuous voyage as to absolute contraband, but have given away the doctrine of continuous voyage as to conditional contraband. That is not really an accurate statement of our position, because the doctrine of continuous voyage in respect of contraband is really not an English doctrine at all. I do not know whether it would be adopted by our courts now. I think it very likely would be; but our doctrine of continuous voyage was quite a different one, and it related to the close trade of an enemy during peace being carried on by a neutral during war. If we were at war we stopped such neutral ships as enemy ships and condemned them. This was endeavoured to be met by their entering, between their departure and destination ports, another port from which trade was legitimate. We said we would not recognize that, but that if it was one enterprise it should be treated as a continuous voyage. That was our doctrine of continuous voyage. The United States extended it to contraband during the Civil War, and the most that can be said about that is that we acquiesced. I do not think we protested against the condemnation of one or two of our ships. And this point, as far as we were concerned, came up for consideration in the South African War, when a question arose on a claim that was put forward by us that a voyage was a continuous voyage when the ship was only bound to the neutral port of Lorenzo Marquez. As your lordships know, the German Government contested that claim on our part, and for various reasons, partly because there was no contraband on board, we did not press the claim and it was never brought into the prize court. That is how it stands. It is not our doctrine as far as any decision of a prize court says it is. I think it might be accepted now as part of our law by our prize courts, but that is speculative. I think it would be more accurate to say, if you want it to be legally accurate, that we had obtained the acceptance of continuous voyage for absolute contraband; but, however that may be, let us think what is the value of contraband in continuous voyage. I will come to the consequences afterwards. Conditional contraband is not earmarked as for any warlike purpose. No one could tell that that was its objective. Do you suppose that if anybody was sending conditional contraband through a neutral port for a belligerent it would be addressed to the belligerent? It would go to a neutral port as ordinary goods, and there would be nothing in the world to indicate to outsiders that it was going to any enemy. It would be consigned to a neutral trader, and no commander of a man-of-war would have any grounds for stopping the ship on its way to a neutral port, because there would be nothing to indicate that there was anything contraband on board.

When the question was first under discussion, I confess that was the governing factor in my mind which led me, not to assent, exactly, but rather to advocate assent in order to obtain the acceptance of continuous voyage for absolute contraband. I thought it could not be of the smallest advantage to us. But when I considered the matter afterwards—since the Declaration was framed—I came to the conclusion that really, on the question of food supply, it is very much to our advantage. Take Germany as an example, and say they took Rotterdam as their port. These goods would be landed at Rotterdam. They would have to go into Germany at a time when, if the coast of Germany was blockaded, the whole volume of her ordinary peaceful trade would be coming by train from neutral ports. The railways would be blocked, the expense and delay would be enormous, and the whole of her trade would come in under great disadvantages. Take our situation. I do not think it is a matter of first-rate importance to us to get our food in neutral bottoms, but assume that it is. If we were at war with Germany I must say I can not imagine that we could not get over the difficulties suggested by carrying the whole of the foodstuffs we wanted in neutral bottoms from French ports. If we had lost command of the Channel and there was time enough to starve us out, I do not think there is much more to be said, or that it much matters, but as long as we command the Channel we can keep going what I might call an omnibus service of ships, carrying all the food neutrals can bring.

I should like to deal now with a question that has been hotly debated—the question of the destruction of neutral ships. I think some of the letters which I have read in the newspapers and some of the very bitter observations that have been made on the subject arose from the fact that perhaps our representatives at The Hague and we in London somewhat overstated our case. It is not correct to state that in no circumstances should a neutral ship be destroyed. Our rule is that if a neutral ship is destroyed by us in circumstances of pressure it should be the subject of compensation in all cases. It is not to be an excuse between us and a neutral that the exigencies of war compelled us to destroy the ship, whatever the cause, whatever the character, or whether or not the cargo be contraband. He is to be compensated in all cases. I think I can show you that very easily. I will read an extract from Lord Stowell's decisions. This is in the case of the *Actæon*:

Lastly, it has been said that Captain Capel could not spare men from his own ship to carry the captured vessel to a British port, and that he could not suffer her to go into Boston, where she would have furnished important information to the Americans. These are circumstances which may have afforded very good reasons for destroying the vessel and may have made it a very

meritorious act in Captain Capel so far as his own Government is concerned, but they furnish no reason why the American owner should be a sufferer. * * * I think, therefore, that he is entitled to receive the fullest compensation.

Again, in another case—*Felicity* (2 Dodson, 386) :

When it is neutral the act of destruction can not be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own State. To the neutral it can only be justified under any such circumstances by a full restitution in value.

And much later Dr. Lushington, in giving judgment in the case of the *Leucade*, in 1885 (2 Spinks, 231), says :

It is the right of the neutral to be brought in to adjudication * * *. No excuse for him (the captor) as to inconvenience or difficulty can be admitted between captors and claimants. * * * If the ship be destroyed for reasons of policy alone, as to maintain a blockade or otherwise, the claimant is entitled to costs and damages.

I think it is perfectly clear, when you come to think of it, that that must be the rule.

Just imagine a case like this. Two fleets within a comparatively short distance of one another are expecting a fleet action. A neutral ship comes up, and is met by one of the belligerent cruisers. We will call it the A fleet, and the ship is on its way to the B fleet, filled with things that the B fleet wants for the purposes of this fleet action. Is there any naval officer in the world who would let that ship go? In such circumstances he obviously can not detach any one to take the ship in. He wants every man and ship for fighting. All he can do is to do the best with the people on board, and if he can not manage to hold the ship he must sink her. I believe any officer in the world would do so. That is our rule. You do it for the sake of your own side. See how that works out. Other nations have not got our rules as to compensation. The result is that if in the public service we destroy a neutral vessel, we, being the belligerents, pay full compensation for everything. But if we are neutrals and a belligerent finds it necessary to destroy our vessel in the public service, it does not follow that our owners will get any compensation at all. We really get the worst of it both ways.

On this point the Russo-Japanese War was extremely instructive. Six ships were sunk altogether, I think. In some cases compensation was paid and in others not, but where the compensation was paid it was paid, not because the ship was sunk—that was not the matter before the prize court—but because the cargo was not contraband and ought not to have been touched at all. I have taken an extract from the translation of the statement made by the Russian court in the case of the *Knight Commander* :

The question of the regularity of sinking a vessel according to the exact interpretation of article 58 of the laws relating to prizes is not one that is sub-

ject to the consideration of prize courts. * * * Whether the extraordinary circumstances observed by the naval commander in the case and which incited him to sink the vessel were sufficient or not is a matter only for the superior officer * * * and not for the prize court. * * * The task of prize courts is to recognize a prize, i. e., whether the capture is legal or illegal, or, in other words, to confirm the right of capture or to refuse such confirmation.

And they also say, if the State itself thinks fit, it may prosecute the captain, but that is not a matter for the prize court.

Now, what does the arrangement in the Declaration do? It asserts, first, the impropriety of destroying a neutral ship. It then says:

As an exception, a neutral vessel which has been captured by a belligerent warship and which would be liable to condemnation may be destroyed if the observance of article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

That involves two considerations—first, the safety of the warship, and, secondly, that the neutral vessel would be liable to condemnation. Both those provisions are necessary. It is also necessary that the parties on board should be placed in safety, and the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship. When you get to the prize court you have to establish both those propositions. If you do not establish them you will have to compensate anyhow. You will have to show that there was danger to the safety of the warship, and that the neutral ship was liable to condemnation, and if you establish both propositions you are justified. Therefore the onus is very heavy. It is said that it is not sufficient when you have lost your ship to be merely compensated. My only answer to that is that there is nothing else, and it is the same now. There is nothing but compensation when property is destroyed. Whether the complaint is to the Government or to the prize court the remedy is compensation, and I know of no other remedy available.

Just consider the difficulties. Even assuming, which I do not lightly assume, that any difficulty of maneuvering or something of that kind would be held, first by a belligerent prize court and then by the international prize court to fulfil the conditions required as to danger to the safety of the warship and the success of the operations, before he can free himself from the duty of paying the compensation he has to show that the vessel is liable to condemnation. I do not know how in 9 out of 10 cases he could possibly do that. He will always have the danger of having to pay compensation on that ground, because the circumstances under which he would sink a ship would preclude any close examination of the cargo, and according to the Declaration, there must be on board more than half

the cargo contraband; and the ship being sunk, it would be very difficult to establish afterwards what they did destroy. The owners would nearly always get compensation. That is a deterrent. If I could think of a better deterrent I would, but I do not know what other deterrent could be devised. It would have been useless to contend that in no circumstances should a ship be destroyed. Under the rule we have established a ship may only be destroyed in case of necessity, the commander acting in accordance with his obvious duty to his country, and, though not perhaps quite in all cases, practically in almost all cases there would be compensation.

I must apologize to your lordships, but I am afraid I must go back for a minute to a matter connected with food supply, because I do not think I ought to leave that out. It is of considerable importance. The noble lord said, and it has been said in many other places, that there is no question that food can not be treated as absolute contraband, but that there is a rule of nations that it should not be. I do not think that the proposition can be put nearly so high as that, and I think the instances that have occurred recently and in other times make it impossible to maintain that view. The French rule that was sent to us with their memorandum as to the law which they regarded as being the true law of war on that subject was this:

Food supplies and war material destined to noncombatants are not in principle considered contraband of war, but may be declared so according to the circumstances, of which the Government is judge, and by virtue of an order emanating from it.

That is, no doubt, in accordance with the view which was strongly urged by France in 1885, when she declared all rice contraband, and to which my noble friend referred in his speech. What happened, according to Mr. Hall in his book on international law, was that all the French consignments or shipments of rice ceased, and as in a very short time the war came to an end no ship was brought into court. Mr. Hall puts it very clearly that the shipments absolutely ceased, and consequently trade was seriously interfered with. It is significant to note that the German Government wholly approved of that declaration, and said it was entirely in accordance with the rules of war at that time. Since that time another great power, Russia, has stated that, in her opinion, in principle, according to the particular war, you may declare food contraband. Russia, it is true, withdrew it from her list at our request, but she made no sacrifice of principle.

Now are we altogether immune? In 1793 we deliberately declared all food supplies going to France contraband, because we desired to bring the pressure of starvation to bear on the French population. The truth is that the whole question of contraband has never been

very clearly established. I should like to read the observations of Lord Stowell in the case of the *Ranger*. He said:

It must always be remembered that this Government might have availed itself of the interior distress to the enemy's country as an instrument of war. It did not, however, but humanely permitted cargoes of grain to be carried without molestation for the relief of the necessities of famine under which Spain had for some time labored.

And further, in another case where there had been preemption, the question was the price to be paid. It has nothing to do with the decision in the particular case, but it assumes the right to stop corn that is going to a particular population. In the war between Japan and Russia this question arose, for apparently one ship was captured in July. The Russian prize court first condemned the cargo as consigned to a Japanese port. Cargo consigned to private Japanese firms was condemned, because near Kobe there was a military arsenal. Flour on board a ship bound for Korsakovsk, where there were no military operations. Rice and other provisions were bound for a Chinese port in the occupation of Russia with no evidence of its destination for the forces. The Japanese condemned rice, the food of the population, going to a Chinese port in the occupation of the Russians. There were other cases, but I do not think I need dwell upon them. What it comes to is this, that there really is no generally recognized rule preventing a nation from placing food on its list of absolute contraband. We have a rule, but other nations do not generally recognize it, and we come in on unequal terms. The object which I think has been achieved by the Declaration is that we should come in on equal terms and that all should be in the same position. I think that is all I need say on the subject of the condemnation of food supplies.

Now, with regard to conversion. Here we are on rather delicate ground. It is not for a moment to be supposed that anybody would read the speeches that were made at the conference, but I do not think that any one who read the speech which I had the honor to deliver would feel that I did not realize the importance of this matter. I may, perhaps, in my advocacy have put it a little too high. There is no doubt it is a serious matter, because in the first place it contains the element of surprise. A ship in virtue of her mercantile flag might go from port to port and fill up with coal until she got to some point where she hoped to operate as a warship. The difficulty—and I am sure noble lords will appreciate it—in dealing with the matter was that it was quite impossible to say that there was any rule of international law which forbade that. We are trying to make a new rule. I know of nothing which could prevent any nation from turning its ships into anything on the high seas when

it is subject to no other jurisdiction, and that right was claimed in the clearest possible terms by the powers. Qualification was impossible, and we had no alternative but to leave the whole thing out altogether. The only direct bearing it has now on the question is whether the omission of a provision to meet that matter is sufficient reason for us to abandon the advantages which we gain in other directions from the Declaration. My view is that it is not.

I hope time will enable us to come to some understanding on this question, but as it stands it is worth examining a little to see what it comes to. In the first place, a good deal has been said about licensing privateers. I always feel that strong language is a mistake, and I think it is really not applicable at all; but, at any rate, if it is, we are on exceedingly delicate ground in this country as signatories of the Declaration of Paris. In the case of the conversion of a merchant ship, if it operates on the high seas, there is, under The Hague Convention, this obligation on the power that converts it, that the ship is to be commanded by a commissioned officer and to fly a pendant, and is to operate as a man of war, to be under the control of the State, and be placed on the registered list of warships. So that, once converted, she is subject to the same limitations as a man-of-war, and I do not think it would be accurate to describe her as being the equivalent of a privateer. It is true that the conversion may have results something very like those that result from privateering, but still she is not doing it for gain. She is doing it as a warship after she is converted. When you come to the question of privateering I do not quite follow it, because this does not depend on the place where the ship is commissioned, and we have the intention in our own ports of turning merchant ships into men-of-war if necessary. At one time we were going to do it on a very large scale. So you limit the question of a ship being a privateer or not to prohibition of the place where the pendant is hoisted. It is quite true they have no precedents against us of having converted a merchant ship at sea. I do not know whether there is a case against any one, but we have so converted prizes. Altogether the ground is so uncertain that it is a matter that can only be settled by further negotiation. But whether it is sufficient reason for dispensing with the advantages which, in my humble judgment, we have gained from the rest of the Declaration I will not again say. I have stated my opinion as to this.

I think I have dealt with the subjects which have been the principal objects of criticism. As to the other matters dealt with in the Declaration, I believe the provisions are in substantial accordance with recognized principles which might very properly be accepted by us, except, of course, convoy, which we have conceded for reasons

to which I really do not think anybody can object. Others who speak later may, if necessary, give explanations as to other matters, but before I sit down I should like to point out the position we are in. I am not speaking for the Government, and what I am about to say is rather a matter for the Government than for me. I only want to point out that we have done everything we could to induce foreign Governments to believe that we wanted the international prize court and that we approved the Declaration, and on that basis they have made concessions. They have signed and I am a little uneasy as to what they will say if we turn round and repudiate it now, and what they would say in future negotiations with this country. I think they will in future in dealing with us want some very strong security from the Government if, having gone so far with this Declaration, it is rejected now. Do not let me be misunderstood on this matter. I am most anxious not to be misunderstood. I would not for a moment suggest that, if in fact this Declaration does injure our vital interests, our material interests, that would not prevail over any consideration. I will only say that, if we reject the Declaration, the onus is on us to show that there is good and sufficient reason why we should not carry out our agreement; but beyond that I would not go for a moment. The interests of this country must always prevail. I repeat that I believe that we have made no sacrifice of any practical belligerent right whatever, and that as neutrals we gain.

Before I sit down I should like to repeat that, with or without the Declaration, there is one thing which stands out clear and pre-eminent. If, unhappily, we should hereafter be involved in war, it is on our own merchant fleet and not on that of neutral nations that we must rely for our food supplies, for the lifeblood that pulses through our arteries, and on which our very existence as a nation must always depend. Our greatest peril, it seems to me, would be in the first fortnight of war, when there might be a commercial panic. Let our nation be assured that all Governments of whatever party feel it their first duty to provide that our forces shall be sufficient to protect our own commerce in our own vessels, and that peril and fear will be averted. No rules can lessen that primary necessity. But by the Declaration we are substituting in the matters with which it deals fixed rules for what now approached to chaos, and also diminishing the risk, by perhaps some ill-considered action on a disputed question, of increasing the area of war, and, at a moment of extreme pressure, adding to the number of our enemies.

My lords, rightly or wrongly, I honestly believe that this will be the effect of the rules in the Declaration and of the creation of the international court, and I therefore earnestly, and from the bottom of my heart, trust that, incomplete as I admit it is in some respects, the Declaration will take its place on the statute book of the nations,

and that those questions which still remain outside its provisions may ultimately reach a conclusion acceptable to this country. I have detained your lordships too long, and I thank you for the great indulgence with which you have heard me.

The EARL OF SELBORNE. My lords, I am sure the House is cordially to be congratulated, as also is the country, on having had the advantage of the very interesting and remarkable speech to which we have just listened from Lord Desart, and I am confident that I shall be voicing the opinion of all your lordships when I say that we are glad that the moment has arrived when he is freed from his official position and can take part in the deliberations of this House. He is an additional ornament, from his own personal ability and his experience, and we welcome him here cordially from both sides of the House. It is not necessary in this House for Lord Desart to disclaim any motives in the fulfillment of his recent great responsibility other than those of pure patriotism, and whether we agree or disagree with his conclusions, we are quite sure of this, that not even the pride of paternity would have obscured his sense of patriotic duty.

The noble earl laid down two rules by which, in his opinion, consideration of this question should be guided, and I accept them both. The noble earl said first, that we must consider this Declaration as a whole. As a whole would it be to the advantage of this country to ratify it? If so, it should be ratified. If, on the other hand, the disadvantages of the Declaration are regarded as greater than the advantages, then Lord Desart admitted that those who held that view would be justified in endeavoring to prevent its ratification. The second rule Lord Desart laid down was that the question must be discussed on the true basis of what the position of other nations is, and not of what we think their position ought to be.

We cannot conceal from ourselves that this is a subject of great difficulty and complexity. No one can have such authority to speak on it as Lord Desart, but many of your lordships, according to your opportunities, will have tried to master the leading features of the question. And the matter being so complex, I must say I regret that Mr. McKinnon Wood, who has been an able spokesman of the Government in this matter, should recently in an able and interesting speech, have endeavored to prejudice its consideration by what I must be permitted to call a wholly irrelevant observation. He said that if this Declaration were not ratified—

one result would be that a new stimulus would be given to the competition in naval armaments, which already was an awful burden upon the nations, and we at least would be compelled to suffer in silence for we should be responsible.

That, my lords, is a statement which really cannot be justified or defended. Whether this Declaration is ratified or not, not one penny

will be added to or taken from the navy estimates of this or any other country.

It is quite impossible for any speaker to grapple with the whole of this vast subject—not even Lord Desart attempted that. I shall not attempt to follow even the major portion of the question which he so ably dealt with. I will take only the case as it affects us as belligerents, and only that part of the case which deals with food supplies. And here I am able to quote Mr. McKinnon Wood with cordial concurrence. It do not think the position could be more completely summed up. He said:

The real question was, Would the Declaration of London make it more difficult for this country to obtain its food supply in time of war than it was before? In this respect should we be better off by accepting or declining the Declaration? The whole of the confusion of thought which had arisen upon this subject had its origin in the fact that none of us had experience of the conditions existing under a state of war with a great naval power, and that none of the critics had stopped to inquire into, and reflect upon, the actual state of affairs now existing before the ratification of the Declaration. If they did they would see at once that this criticism of the Declaration was quite beside the mark—that the Declaration did not make us worse off in this respect, but better off. It was no argument against the Declaration to say that under certain conditions food might be seized by the enemy, when the fact was, at the present moment, food might be seized by the enemy without any conditions at all. He would try to put the central points as simply as possible. If food was being brought to Great Britain in British ships, the Declaration would not alter the present position in the least. If the food was being brought to Great Britain in neutral ships, the Declaration would make us much better off than we were before.

That is the position of the Government and of Lord Desart, and, with your lordships' permission, I will proceed to examine it.

What is the position now? Assume that we are, unhappily, at war with some great naval power and that this Declaration has not been signed. Will the enemy take our view, or what has been stated to be our general view, that food supplies are only conditional contraband where it is presumed that the food is on its way to assist in the operations of the enemy and that its destination is for a naval or military force of the enemy, or for some place of naval or military equipment in the occupation of the enemy? That, I understand from the Blue-book—Lord Desart will correct me—is the position we took up. But let us suppose the enemy to take a more extreme view. Let us suppose that they say, as it is suggested that they might, and as I think they would say, that all foodstuffs coming to the United Kingdom were absolute contraband. In the first instance, as Lord Desart said, we have to depend upon our own naval strength. But there is a matter which, I think, Lord Desart did not sufficiently deal with, and which, it seems to me, the Government have not laid sufficient stress on in the Foreign Office correspondence—namely, what would be the position of the great neutral powers if the enemy did declare all

foodstuffs coming to the United Kingdom to be absolute contraband. My lords, I think that a neutral power is in a position to put very great pressure on either side, and the possibility of that pressure has been much too lightly treated by the Foreign Office in its correspondence. The position of the belligerent power when a neutral power begins to make representations to it in respect of its treatment of some question of international law—say on this question of absolute contraband in the case of foodstuffs—would be strictly limited by two considerations: in the first place, the reserve strength of the neutral power to make itself unpleasant if it chose to do so, and, in the second place, the calculation of the belligerent power on how its own position would be affected if the neutral power became another belligerent.

We have had some experience of this matter. At the time of the South African War we regarded any representation from a neutral power as to our action as a matter of the greatest consequence. We framed our policy—I am quite sure the party opposite would have done the same in similar circumstances—in order to avoid giving any opportunity for a neutral power to throw its weight against us. Again, in the case that has been quoted—the case of France in 1885—nobody can read the correspondence between France and this country at the time without seeing that the representations of Lord Granville had the greatest possible weight with the French Government and profoundly affected its action. In the recent war between Russia and Japan, had Russia thought at an early stage of that war that we were likely to throw our sword into the scale against her, is it not perfectly certain that she would have treated our representations with the very greatest respect? We were very careful at that moment of peculiar delicacy, after the incident in the North Sea, not to put any pressure on Russia that could have been construed as unduly taking advantage of her then difficulties, and if Russia did not pay all respect to representations made by the Foreign Office, I believe it was because Russia did not think at that moment we were prepared to make those matters questions of hostility. As I have said, the extent to which the representations of a neutral would be respected by a belligerent will always depend on two circumstances—the power of the neutral to make itself felt, and the calculation of the belligerent as to whether the neutral is likely to turn belligerent. Now, apply those considerations to the case that I am supposing. Suppose an enemy power endeavoring to stop all neutral ships bringing corn to the United Kingdom, no matter for what port destined, or to what merchant. Is it likely that the great neutral naval powers of the world would consent to their ships being treated in that way? Is it not perfectly certain that they would make representations to which our enemy must undoubtedly listen; and therefore, even supposing

the worst construction put on the law in this matter by our supposed enemy, I say that the influence of a neutral power would be very great against the abuse of this doctrine. That is the position now.

But, my lords, what will the position be if this Declaration is ratified? Take articles 33 and 34, which have been so often quoted and round which the controversy turns. Article 33 reads:

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a Government department of the enemy State, unless in this latter case the circumstances show that the goods can not in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under article 24 (4).

Then article 34 runs:

The destination referred to in article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country, who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. . . .

I want, first of all, to compare the words "or other place serving as a base for the armed forces of the enemy" with the words which they replace, "Some place of naval or military equipment in the occupation of the enemy." I have a complaint against the Foreign Office, that in their correspondence they have suggested, almost insinuated, that there is no material difference between these two forms of words. I maintain that there is very material difference indeed. Let us take a concrete case. Nobody doubts that Portsmouth is "a place of naval or military equipment," or that it is also "a place serving as a base for the armed forces of the enemy." But take Southampton. Who could possibly contend that Southampton was "a place of naval or military equipment"? But I can imagine many people contending that Southampton was "a place serving as a base for the armed forces of the enemy." Therefore I say that the Foreign Office have been somewhat misleading in the suggestions they have made that there has been no material change in the substitution of one set of words for the other.

I ask your lordships not to look at this matter from the point of view of a statesman in an armchair, or even from the point of view of international and constitutional lawyers; look at it from the point of view of the enemy admiral or cruiser captain. In this connection I should like to fortify myself with another passage from Mr. McKinnon Wood. He says:

What the critics seem to have overlooked entirely was that if we were at war what would concern us would be not our view, but the view of the enemy.

With that I entirely agree. That is the whole question. What is the enemy's fleet there for? What is the main, the only, object of the

admiral in charge? What are the only duties of the captains of the enemy cruisers? It is at all costs and hazards to damage this country in a maritime war. Therefore it is an essential part of his duty, so far as he possibly can, to keep supplies of foodstuffs out of this country. Therefore he will read in the largest possible sense the words "or other place serving as a base for the armed forces of the enemy." Put yourselves, my lords, in the position of the enemy cruiser captain. Would not he contend that the whole of the Thames must be a "base serving for the armed forces of the enemy"? Would he not say the same of the Clyde? Remember that our territorial army would be mobilized. The cruiser captain, in these circumstances, will be absolutely bound to contend that every important port in the United Kingdom is a place serving as a base of supply for the armed forces of England at that moment. He may, perhaps, be proved to be wrong. The international prize court, when the case is brought to it, might give its decision against him. But how would that help us in a war? The war would be over. The court of international appeal will give its decision perhaps a year or two years after the war. It is not likely that the cruiser captain will be in the least influenced by what he may think will be the eventual decision of the international court of appeal. If his action assisted his Government in the prosecution of the war, they will indeed not visit it heavily on him if one or two years afterwards they have to pay some indemnity under the decision of the court of appeal.

Now I come to the position of the neutral, and this is a point which has not received enough attention. I have endeavored to show that as the law is at present a neutral power can put great pressure on a belligerent government if it abuses this doctrine of foodstuffs becoming absolute contraband. But if the neutral has signed this Declaration of London he can no longer put pressure on our supposed enemy. He may think that the enemy admirals are stretching the meaning of these articles far beyond all reason, but he has signed the Declaration and ratified it. Diplomatic representations will be ignored by our enemy, and the neutral power will have, like ourselves, to be content with the decisions of the international prize court, which may be given a year or two after the termination of the war. Therefore my answer to Lord Desart in respect to this matter is that this Declaration does put us definitely in a worse position than we are in now, even supposing the enemy were to declare all foodstuffs coming to this country to be absolute contraband. It seems to me that it is not easy to disprove that proposition. Lord Desart has laid great stress on the fact that in such a war we have to depend on the food brought in our own ships and that unless we can protect our own sea-borne commerce by our own navy we

can not get our salvation out of neutral bottoms. I cordially concur with the noble earl. If we can not protect our own ships, if we can not hold the command of the sea, we are not going to get salvation out of neutral bottoms. There I entirely concur with the noble earl. But surely he goes much too far when, as the corollary of that doctrine, he says it is of no importance at all that you should get any supply from neutral bottoms.

The EARL OF DESART. I do not think I quite went as far as that. I said it would be of relatively small importance.

The EARL OF SELBORNE. I am glad the noble earl should have modified his statement. I certainly thought his first statement a very strong one, a startling one, because although I admit the importance to be only relative, yet I do say that it is to the interests of this country in war to get all the foodstuffs we can by neutral bottoms. Supply by neutral bottoms might be of great importance, and anything we do to make that supply more precarious is unnecessarily handicapping us in the conduct of a possible war in the future. If you admit that the supply of corn by neutral bottoms, in addition to the supply coming in our own ships, if you once admit that supply to be of great importance—though relatively of small importance compared with that which is brought by our own shipping—I think your lordships must see that this Declaration goes very far to make that source of supply precarious. Let me read article 40:

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

That is the position. Now, a cargo of wheat, for example, invariably forms more than half of the weight or the freight; it generally forms the whole freight of a cargo of one ship. The neutral ship, therefore, carrying a cargo of wheat to England in time of war will, if this Declaration is ratified, not only be liable to have the cargo seized, but the ship herself will be liable to be seized and condemned, because, in the opinion of the cruiser captain, coming to Glasgow, Bristol, Southampton, or the Thames she is necessarily coming to a place that is "a base of supply for the armed forces of the enemy." The owners of neutral ships would necessarily consider very carefully, therefore, before they ran such risks.

My lords, I should like to say a word or two about the Miscellaneous Paper No. 2, 1911, which has just been circulated by the Foreign Office. This is a reprint of the correspondence which took place in 1885 in respect of the treatment of rice as contraband. It is the correspondence between Lord Granville and the French Government, and there are some rather remarkable features in it. A good deal of the Foreign Office case is based on that correspondence, and the arguments of the French Government, quoting British authorities, is

certainly rather powerful. I want to draw the attention of the noble viscount the President of the Council particularly to this fact. M. Waddington, the French ambassador, in his despatch of March 10, 1885, quotes as part of his authority what the Attorney-General said in the House of Commons in March, 1854, and what Mr. Gladstone said in July, 1870, quoting Lord Malmesbury in 1859. These quotations were translated into French at the French Foreign Office, and now our Foreign Office have translated M. Waddington's despatch into English; and it is interesting to see what correspondence there is between the original extracts from Hansard and the Foreign Office retranslation of the French translation of Hansard.

I will read first the Foreign Office retranslation of the French version of what the Attorney-General said in 1854:

Contraband of war may in general be classed as follows, in two categories:

1. Articles which, by their nature, are of direct use in war, such as arms and ammunition.
2. Articles which may be of indirect use in war, by permitting a continuation of hostilities, such as provisions.

I will now quote what the Attorney-General really said:

A recent most able treatise on international law, which occupied 34 closely printed pages, substantially classified contraband of war under two heads—

1. Such things as from their very nature were applicable to the purposes of war, such as arms and ammunition; and
2. Such things as were capable of being applied to other purposes besides those of war, but which might be intended for the furtherance of war, such as provisions.

So that "which might be intended for the furtherance of war, such as provisions" becomes now "by permitting a continuation of hostilities, such as provisions." Does not the noble viscount think that just a little "sloppy"?

This is the Foreign Office version of what Mr. Gladstone said in the House of Commons on July 21, 1870, when quoting an extract from an official letter of Lord Malmesbury, dated May 18, 1859:

I should state that Her Majesty's proclamation does not specify—and could not, in fact, specify—what articles are or are not contraband of war; and that the passages relating to contraband of war are not intended to prevent the export of coal, nor of any other article, but simply to warn Her Majesty's subjects that if they convey, for the use of either belligerent, articles which are held to be contraband of war, and if their property be seized by either belligerent, Her Majesty's Government will not take upon itself to intervene on their behalf against a seizure of this kind, or against its consequences. I should add that the prize court of the country which has made the seizure is competent to decide the case.

The real quotation taken from Hansard is as follows:

I am to state to you in reply, that Her Majesty's proclamation does not specify, and could not properly specify, what articles are or are not contraband

of war, and that the passages therein referring to contraband are intended not to prohibit the exportation of coal or any other article, but to warn Her Majesty's subjects that if they do carry, for the use of one belligerent, articles which are contraband of war, and their property be captured by another belligerent, Her Majesty's Government will not undertake to interfere in their favour against such capture or its consequences. I am to add that the prize court of the captor is the competent tribunal to decide whether coal is or is not contraband of war.

Now, I protest that there is a real difference considering the care with which language is chosen under such circumstances and in dealing with such cases, there is a real distinction of meaning involved here; and although the noble viscount objects to a phrase that is not his own I suggest that "sloppiness" has almost become "a mess" in this case.

I have pointed out the difficulty, the danger almost, which appears to me to be involved in some of the articles of this Declaration in respect of food supplies to the United Kingdom in time of war. But there are other parts of the Empire to be considered, and it does not seem to me that our representatives at this conference did consider the effect of these provisions on other parts of the Empire. I will take the case of South Africa, which I know best. I draw your lordships' attention to the phrase about foodstuffs becoming contraband if going to a place serving as a base for the armed forces of the enemy. Take the case of South Africa, which might be seriously involved in a war in which the Empire was engaged. It will certainly be argued that foodstuffs cannot go to any port in South Africa that is not "a base for the armed forces of the enemy." There are only two railway systems in British South Africa, the one that goes north by Natal from Durban and the other that goes north by Cape Colony from East London, Port Elizabeth, and Capetown. It is impossible for the armed forces of this country in any part of South Africa to be supplied from any other British ports; and it is certain—it is not a matter of hypothesis—that the cruiser admiral or captain would claim that foodstuffs going to these ports in South Africa were beyond all question going to places serving as "a base for the armed forces of the enemy."

I do not wonder that a representation has been from Australia, where a somewhat similar case may arise. And here I should like to make a confession of faith. Sir Edward Grey, in answering a question in the House of Commons as to why he had not consulted the Dominions upon this question, said he was going to do so, but it had not been practicable at an earlier stage. Now, that answer is one which, I admit, would have been given by any Government previous to this one. My confession of faith is this—that the time has gone by when an answer of that kind ought to be given. In a matter

affecting the interests of the Empire as a whole no Government in this country ought to frame an agreement with foreign powers and commit themselves to that agreement before taking into consultation the dominions overseas. This Government has acted otherwise. So far as I have any influence, I will never be a party to such action by a government of which I am a member. I know that the policy I have advocated is a breach of the traditions of the Foreign Office and that there are difficulties, but in my opinion it is perfectly impossible to carry with us the moral support and confidence of the dominions if any longer we make these agreements or commit ourselves to them without consulting them. Therefore, while I am glad that His Majesty's Government are about to consult the dominions at the forthcoming imperial conference, my contention is that it was practicable for them to have done so at an earlier stage, and that they ought to have done it at an earlier stage.

My lords, I shall not attempt to deal with the effect of the Declaration upon the conduct of a naval war. There is only one authority, in my opinion, competent to give an opinion about that, and that is the Board of Admiralty. Lord Desart had as his colleagues at this conference two distinguished naval officers—friends of my own whom I hold in great respect. But they are not the Board of Admiralty, and it was because they did not necessarily represent the views of the Board of Admiralty that I put the question to-day to the Lord President of the Council. I asked him whether he could lay upon the table the views of the Board of Admiralty. I understood from his reply three things. First, that the Government have formally consulted the Board of Admiralty; secondly, that the Government do not consider it compatible with the public interest to lay the opinion of the Board of Admiralty in extenso before Parliament; and, thirdly, that the opinion of the Board of Admiralty might be summarized thus: that in existing circumstances the effect of the Declaration of London and the establishment of an international prize court on the conduct of a naval war would be small and inconsiderable. I am glad the Government have consulted the Board of Admiralty, but I think they ought to have done it before.

VISCOUNT MORLEY OF BLACKBURN. How could we have done it before?

The EARL OF SELBORNE. Of course, if the noble viscount tells me they were consulted before the Declaration was signed, that is a complete answer to my criticism.

VISCOUNT MORLEY OF BLACKBURN. No, I did not say that. To tell the truth, I do not know, being a newcomer. I did not say what time. My answer was not what time they were consulted, so it is immaterial.

The EARL OF SELBORNE. I do not think this adhesion of the Board of Admiralty can be called very enthusiastic, but if they were consulted before the Declaration was signed, of course that particular criticism falls to the ground. If they were consulted at the right moment their opinion necessarily had great weight with the Government. But supposing they were not consulted any more than the overseas dominions were consulted before the Declaration was signed, then I must say that the Government were not justified in signing the Declaration and that their conduct is inexplicable. It is absolutely essential that the Board of Admiralty should have been consulted, because on them and on them alone will rest the responsibility for the conduct of a naval war, if a naval war unhappily should arise.

I end, as I began, by admitting the extreme difficulty and complexity of the whole question. I have not dogmatized on the matter, but I have endeavored to show how real and grave are the doubts which beset many of us in this House, and which doubts are reflected in public opinion in the country. It is not confined to our side, but spread over a very large section of the mercantile community. I understand what Lord Desart would have us do. He believes that the Declaration preponderates with advantage to us, and he thinks that any failure to ratify it now would be unfortunate in its consequences in the estimation of other powers. But in my opinion the Government did not realize, nor did Lord Desart, with all his skill, realize, all the questions and difficulties that lay within the compass of this most complex problem. If they had done so, they would have given a greater opportunity to the interests most affected in this country to make themselves heard, and to themselves to think out the questions in consultation with the Board of Admiralty and the Governments of the oversea dominions before committing this country so deeply as, apparently, they have done. They have now agreed to wait to have this matter discussed by the imperial conference, and surely it would not be inconsistent with the dignity of the Government, and it would be wholly consonant with the interests of this country, if the Government would utilize the time between now and the imperial conference by allowing the question to be freshly considered by some competent body of persons with impartial views who have not already taken part in the controversy. My noble friend behind me suggested a royal commission. I have not considered that proposal myself; it is new to me; but it is an admirable illustration of my contention and my plea that the Government should not put their foot down. We may be wrong, my fears may be groundless, but the step, once taken, can not be re-traced. I would plead for further consideration, and that the Gov-

ernment should not reject all suggestions for probing this question to the bottom.

On question, further debate adjourned till to-morrow.

House adjourned, at 20 minutes before 8 o'clock, till to-morrow, half past 10 o'clock.

MARCH 9, 1911.¹

THE DECLARATION OF LONDON.

Debate on the motion of the Lord Desborough to resolve, That, in the opinion of this House, it is desirable that a royal commission be appointed to report on the advisability of this country agreeing to the terms of the Declaration of London resumed (according to order).

The LORD CHANCELLOR (Lord Loreburn).² Your lordships have heard already enough in this debate to satisfy you that the subject-matter of it is of great complication and also of great delicacy. It covers a very wide field. There is, one might say, almost a literature connected with each of the controverted topics, and there has been a great deal of discussion out of doors—a great deal of natural and reasonable discussion. I think I am not wrong in saying also that there has been some mischievous and unfair criticism of this document. I recognize the impartial spirit in which the noble earl Lord Selborne, on behalf of the opposition, treated this matter. I think he must be aware as well as any of us that those responsible members of either House of Parliament who speak upon this subject are liable to have their words quoted, possibly in some future discussions between this and other countries, as admitting propositions unfavorable to the interests of our own country; and I would respectfully suggest to noble lords who speak, if they will allow me to do so with great respect, that we all of us should be very careful, however strongly we may feel in a hostile sense to any of the provisions of this Declaration, so to express ourselves as not to give a handle that may be laid hold of against our national interests.

The real question here, so far as this Declaration is concerned, is this: When nations are fighting on the great highway of the ocean, on what conditions are neutrals to be protected; what are the rights

¹ 7 H. L. Deb., 5 s., 375.

² Liberal. Robert T. Reid entered political life in 1880 as a member from Hereford. From 1886-1905 he sat for Dumfries, during which time he held the offices of Solicitor General and Attorney General and served on the Venezuela Boundary Arbitration Commission. In 1905 he became Lord Chancellor, and in 1906 was raised to the peerage. He was much interested in this problem of naval warfare and later published a book on *Capture at Sea* (1913).

that are to be allowed to neutrals when they are in the midst of a scuffle of fighting forces on the great highway of the world? It may be asked, Why was any agreement needed at all? The answer is to be found in the history of the last 120 or 130 years, which I need not say I do not intend to inflict upon your lordships, but to which I shall refer with the utmost brevity. In the old times the British Navy enforced belligerent rights with great strictness, and there were constant protests. Your lordships will remember the two armed neutralities and also the war with the United States of 1812, and, further, that this country was obliged from time to time itself to make concessions or departures from the extreme rights which it had asserted, because they were intolerable to many other nations. We were fighting at that time for our existence, and we held on to those rules so long as we could. By the end of the Napoleonic wars one thing was clear, and that was that each nation was its own judge so far as international law was concerned, and interpreted its own laws by its prize courts without appeal, causing an immense variety and conflict of different opinions in different countries. Also a code of maritime law had been constructed under the conditions of British naval supremacy which bore very severely upon neutrals. This was throughout dissented from by a great number of nations, and there were vehement protests from time to time.

Gradually during the nineteenth century Great Britain began to feel that she had an interest as a neutral power as well as an interest as a belligerent, upon which we dwelt during the great stress of the Napoleonic wars. That first found expression in 1856, when the Declaration of Paris was agreed to, which gave effect to the rule of free ships and free goods and also abolished privateering. I will not enter for a moment upon the merits of that Declaration. Whether we were right or wrong to enter upon it, it was a concession—an inevitable concession—by this country to the strain and stress of foreign and neutral powers against the code of laws which we had before established. Then came other wars—the American Civil War, the Franco-German War, the South African War, and the Russo-Japanese War, some of which were fertile in, all of which gave occasion to, disputes in regard to the problems of maritime law and neutrality. We found a great variety of opinion, each State being a law to itself, with an inevitable succession of conflicts threatening at times to involve actual collision between the belligerents and neutral powers.

The last and most important of these wars for this purpose was the Russo-Japanese War within the last few years. We were then neutral. There was immense complaint on the part of our merchants against the conduct of Russia, one of the belligerents, because Russia asserted a law differing from that which we had explicitly recognized, and determined, as we had always done in the past, that

the law of Russia should be applied in her own courts without any appeal. Members of the late cabinet will recollect, I have no doubt, disputes about various ships, the names of which I have forgotten, which were destroyed. Neutral ships carrying contraband were destroyed, and were not taken into port for adjudication. Our Government complained about it. The Russians stood firm. What was the alternative presented to us in the years 1904 and 1905? Either to drop our complaints without compensation to our merchants, or to have recourse to the arbitrament of war. It was in those circumstances that the commercial classes of this country began to realize more fully a sense of that which had been gradually growing, that we had interests as neutrals, by reason of our vast commerce, exceeding by far the interests of other countries—interests which could not be disregarded in considering what the law ought to be on a subject like this. The theme upon which our commercial men chiefly dwelt on that occasion was the uncertainty of the law. The men whom we wish to protect are those who have innocent commercial enterprises in hand. It is legitimate to run a blockade, it is legitimate to take the risk of carrying contraband; but you do it knowing the risk. While, of course, we ought to see that the interests of our merchants who do that are fairly treated, they are comparatively few in number, and our real and main interest is that those who wish peaceably to carry on their trade with a belligerent country should know without controversy what goods they can carry and what class of goods they should avoid.

In those circumstances there were these doubts and difficulties: in the first place, each nation was a law to itself in its own prize courts, and secondly, the law they applied was doubtful and uncertain, and the consequence was perplexity and embarrassment to our traders. That being so, the first thing was to secure an international prize court. We have done so under the twelfth convention. At present, any nation has its own prize court without appeal. We have now secured a right of appeal. It is clearly an advantage to us if we are neutral, as the illustration of Russia in the Japanese War shows. We can trust a tribunal of even comparatively disinterested nations rather than of a nation at war and perhaps fighting for its life; and if we are to get this advantage, by what right are we to refuse it to other nations? When we are at war we shall then be a nation interfering with neutrals and liable to their pressure in the midst of our own great difficulties. What should we do? We should often do what we did in the case of the Bundesrath during the South African War. We should give way, even though that seizure were justified, in our opinion, by law. We should give way in order to avoid complication and difficulty, even if we were right. Now we

shall have an opportunity of saying, after the Declaration has been ratified, that we prefer to go before the international prize court, and then we shall get our rights. Our only disadvantage is the possibility of a perverse judgment from this new court. I do not think we are likely to have a perverse judgment from nations which are not interested in the quarrel which is going on. I think we are more likely to have a fair judgment than from the court of a belligerent nation. There was one observation made by my noble friend Lord Desborough which I think he could not quite intend with regard to this international prize court. He said that the court would make the law. But what are the words of the convention?

LORD DESBOROUGH. I think I said that M. Renault had appended to that convention a very similar report to that which he appended to the Declaration of London, and that in his report he distinctly stated that the court was to make the law. It is not in the convention I know, but it is in the report, and it was for that reason that I was anxious to know whether M. Renault's report was to be taken authoritatively.

THE LORD CHANCELLOR. I am sorry I do not know the passage in the report to which the noble lord has referred, but I am quite sure the noble lord's statement is made in entire good faith. But these are the words of the seventh article:

If a question of law to be decided is governed by a treaty in force between the belligerent captor and a power which is itself, or the subject or citizen of which is, party to the proceedings, the court is governed by the provisions of the said treaty. In the absence of such provisions the court shall apply the rules of international law. If no generally recognized rule exists the court shall give judgment in accordance with the general principles of justice and equity.

I do not think anybody could ask for a fairer rule.

Having settled in the convention that there shall be an international prize court, the next thing was to try and raise from chaos into something like order the rules which this court was to apply upon disputed points, and to ascertain and amend doubtful points of international law. That is what has been done in this Declaration, so far as we could prevail upon other nations to agree. You can not compel people to agree, but you can try, and meet, and see if you can not come to some common principle.

I am happy to think that of all the proposals made in this Declaration—and they are numerous—there are very few that are really objected to. Let me deal with them one by one. Complaint has been made of the rules laid down to govern blockade. Let me shortly tell your lordships what the old English rule was and how far we have given way and how far other nations have given way. The old English rule was that you could seize a neutral ship at any point on

the voyage to the blockaded port, and if she was coming out of the blockaded port you could seize her at any time until she reached a neutral port. Some powers held that you must actually inscribe the notice of blockade on the ship's papers before you capture her. In other words, that she can have what the English law gives to every dog, one worry, before she is regarded as a ship liable to capture. That is making blockade illusory. Other powers held the rule that you must have a line laid down, and a ship could not be captured unless she was clearly about to cross that line. That also tended to make blockade illusory.

The Declaration proposes that no notice need be inscribed on the ship's papers and that knowledge of blockade alone, however acquired, is sufficient. That was our rule. But it says that the offending vessel must be captured by a ship of the blockading force which may pursue her. You may have swift ships outside the port; two or three lines of the blockading force; outlying ships notified by wireless telegraphy, which may pursue her. Under the Declaration they may pursue her as far as a neutral port to say the least of it. In substance this is the old English rule with a very slight alteration. We give up, it is true, the right of capture at any point in the voyage to the blockaded port, which is a very small matter. How small a matter it is I will give your lordships the means of judging, because I am informed by the Foreign Office, and no doubt it is true, that out of the 88 reported cases in the legal annals of this country which relate to blockade there is not one in which this point arose. How insignificant, how unimportant, this point is, and how almost completely we have got our own way on the subject of blockade I have endeavored to show.

Let me come to the next point in the Declaration—that dealing with contraband. The difference on this subject between the different powers are extremely serious. We have, as I have said, the experience of the Russo-Japanese War when many British ships were captured, and there was loud complaint in England and some of the chambers of commerce informed the Government that it had been found in many quarters necessary to give up trading with Japan by reason of the action of the Russian Government and her cruisers. Accordingly our great point was to make it as clear as we could what was not contraband in any circumstances, what was contraband in certain special circumstances, and what might always be treated as contraband, so as to enable merchants to know what they could and could not ship safely. There is a list of free goods agreed to in the Declaration which gives absolute security so far as that list goes. There is also a list of absolute contraband. There can not be objection made to that, because it nearly all consists of gunpowder, arms, saddlery, and other things exclusively used for the purposes of war. The

meaning of the rules which I summarize throughout because it would take me hours to read every word is this. The neutral ships must not carry belligerent implements or materials of war specified in the list, but, considering the advance of science and the possibility of new discoveries, belligerents may add by public declaration and notification to that list other articles, provided that they are articles exclusively used in war. Accordingly our merchants will know very well what to avoid if they are going to deliver goods in belligerent countries.

I now come to conditional contraband—that is to say, contraband only in special circumstances. Goods susceptible for use in war, as well as for the purposes of peace, will always be regarded as being possibly and sometimes treated as contraband. There is a list, also, of conditional contraband provided in the Declaration. So far as I have heard in this debate, and so far as I know, although I do not pretend to be as diligent a student of the newspaper press as perhaps I ought to be, there is no complaint as to any article included in that list except foodstuffs—a most important article, of course, I quite agree, and one on which the whole of this controversy really turns. A great deal of complaint and clamor, and, I venture respectfully to think, not always very well-informed or well-instructed clamor, has arisen because we have agreed in this list that foodstuffs may in certain circumstances be regarded and treated as contraband of war. People speak as if it is the final abandonment by this country of all the principles that we have insisted upon. Great Britain has always treated foodstuffs as being conditional contraband—that is to say, as being matter which may or may not be contraband according to the circumstances of the case. No one who knows the subject will question that. So have all other countries. You can perfectly well imagine that in some circumstances the supply of food to an enemy may save his army from utter destruction, and may be of far more assistance to him and more prejudicial to the other belligerent than the supply of any number of pistols, rifles, and ammunition of war.

The difference between us and other countries with regard to the treatment of foodstuffs has been very wide and marked, but it has not been with regard to the right to treat foodstuffs as conditional contraband, but as to the circumstances in which foodstuffs can be so treated. There is history connected with this branch of the subject. As I understand the documents, bluebooks, and historical accounts, France, Germany and Russia have at times asserted that foodstuffs were liable to be seized under all circumstances—not any special circumstances, but in all circumstances—to whatever port they were destined if they were destined to a belligerent port. That would be most dangerous indeed to the interests of this country if it were allowed, because we are dependent more than any other nation in the

world upon imported food. The British rule was that foodstuffs could be captured only if their destination was in effect to help the fighting forces of the belligerent. I think myself, and I hope your lordships who have studied the documents will consider, that the Declaration does in very little depart from the British rule adapted to modern circumstances.

Let me summarize the effect of articles 33 and 34 to which Lord Selborne drew particular attention, and which, indeed, I admit are of great moment in connection with this subject. Henceforth foodstuffs are free unless they come within articles 33 and 34. They are contraband if they come within 33 and 34. They are contraband if they are destined for the use of the armed forces of the enemy or of a Government department of the enemy State. And according to the Declaration they are presumed, though the contrary may be proved, to be so destined if they are consigned to the enemy authorities or consigned to a trader established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. It has been pointed out that supplying articles of this kind to the enemy may mean to the individual enemy and not to the enemy Government. Sir Edward Grey has stated that when we ratify this Declaration we shall make it clear that all we agreed to is that it should mean "supplied to the enemy Government." Food supplies are also, under the Declaration, presumed to be contraband if they are consigned to a fortified place belonging to the enemy or to another place serving as a base for the armed forces of the enemy.

I will advert in one moment to the phrase that was commenced upon, "base for the armed forces of the enemy," but is not that, on the whole, very near the English rule as regards foodstuffs being treated as contraband of war, subject only to the point made about the words, "a base for the armed forces of the enemy"? In my opinion that does not, and can not, apply in the case of our being at war, to all the ports in England, as one noble lord suggested it would. It cannot so apply, and when he asks us to give an illustration, I say for instance the port of Bristol. But may I take this attitude, which I believe your lordships will accept and will assent to? I do not think it is possible to say "serving as a base for the armed forces of the enemy" would enable an enemy to treat all the ports of England as a base for our armed forces, otherwise it would reduce the articles to an absurdity. And I do hope that no one of your lordships, or no responsible writer in this country, will give countenance to an idea of that kind in any speech he may make or any letter he may write.

LORD DESBOROUGH. The report distinctly states "base of supply." That is a very important point. The original document is enlarged into "base of supply," not merely "armed place."

The LORD CHANCELLOR. I think your lordships would not desire or think it appropriate that I should enter upon a legal argument upon that subject before your lordships. I ask you to accept as my opinion, about which I entertain no real doubt, that you could not treat any port, except ports which are actually magazines for war or actually places of equipment for war, as being within the term "base for the armed forces of the enemy."

Let me pass on, on the subject of contraband, to the only other point that remains. Some nations, notably America, have asserted that if the ultimate destination of a cargo of food or other conditional contraband is to the enemy, you may seize it even if its primary destination is a neutral port. An illustration may be given. Supposing for example, we were, which Heaven forbid we ever should be, engaged in a war against Germany. According to the American doctrine, which was applied in their Civil War, you might stop conditional contraband destined for Germany which was to be delivered in the first instance at Rotterdam. The British rule has never been clearly defined, although we acquiesced in practice during the American Civil War in the American doctrine. The Declaration of London abolishes this doctrine, which is known as the doctrine of continuous voyage, for conditional contraband—that is to say, for food—and establishes it for absolute contraband. Were we right in agreeing to this? In the first place, it was difficult for us if we wished to oppose it, because we could not say absolutely that it was contrary to the British rule. But ought we to resist it? Is it to our disadvantage? We are more in need of foreign supplies of food than any nation in the world.

The Declaration in this particular facilitates the supply of food through a neutral port. Suppose we were at war with Germany. Food could come from America under the Declaration of Paris quite free and safe to a French port and be run across the Channel, even if we had lost command of the sea—or, at least, it would have a chance of running across the Channel. I admit, on the other hand, that food could be safely supplied to Germany through Rotterdam under this Declaration. Which stands to gain most by the Declaration facilitating this kind of trade? I say Great Britain stands to gain most, because we are more dependent upon foreign food, and because we can not, and Germany can, get food supplies by land transit across her frontiers. The Declaration of Paris in this respect can be no more than convenient to Germany. It may be absolutely vital for our advantage. Let me take another illustration, because a great deal of attack has been levelled against this part of the Declaration. Let me again suppose that we are at war with Germany. A ship laden with food starts from America for one of the belligerent countries, Great

Britain. Suppose her bound for Bristol. If you reject the Declaration, Germany might claim to seize her on her way. If you accept the Declaration, Germany could not seize her. But suppose she is bound for Havre, a neutral port. If you reject the Declaration, Germany might seize her under the doctrine of continuous voyage. If you accept the Declaration, Germany could not seize her, because she was destined for Havre, which is a neutral port. I think this is distinctly in our favour if we are belligerents; and it is admittedly in our favor if we are neutrals, because it enlarges our opportunity of trade and commerce.

I pass now to the destruction of neutral prizes, which has been the subject of attack by many people. All nations assert the right to destroy neutral prizes, if they find they can not take them into a port, except Great Britain, Japan, Spain, and Holland. That is the law which they would apply in their prize court if you reject this Declaration. Even the record of Great Britain is not quite clear upon this subject of the destruction of neutral ships. The Declaration allows it, but allows it subject to distinct conditions. The ship may be destroyed if the observance of article 48—that means taking her into a port for adjudication—would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time. Supposing we reject this Declaration. Our enemy would destroy neutral prizes at discretion, without any limitation at all, acting upon her own law. But suppose that we are neutral and our merchant ships are destroyed? This actually happened, as we know, in the Russo-Japanese War. We were then put to the choice I have referred to, either of allowing the incident to pass uncompensated, or of having recourse to war with Russia. Of course, the late Government, like sensible men, never thought of making that a subject of a declaration of war. If that happened again after this Declaration had been ratified Russia would have to submit to the international court and to pay compensation if she was found to be wrong. These are the only points in this Declaration which have been made, I think, the subject of attack in this House, and they are the chief points, almost the only material points, which are attacked in the campaign outside this House.

The noble lord, Lord Desborough, complained that no provision appears in the Declaration to deal with the difficult point of the conversion of merchant ships into war vessels on the high seas. Nations differ upon this subject, and it was found impossible to arrive at an agreement. We should have liked to have arrived at an agreement very much, but we could not because other people would not agree to it. Is it not a strange subject of complaint that having done our best to agree with other nations, we found that other nations were not willing to agree with us? The only real point is this, whether, being

unable to get agreement upon this point, and therefore being obliged to leave the point in the chaos of uncertainty and obscurity in which it now rests, we were to refuse to agree to all the other terms which the other powers were willing to give us? That is the point.

Now what does it all come to? So far as this Declaration touches the law we gain certainty for our shipowners and our merchants by laying down rules which, if they are observed, can make their commerce safe. Then, do we pay too high a price for it? Every one will agree that certainty of that kind is a very desirable thing if we do not pay too high a price. I have endeavored to show your lordships, by examining point by point the different changes that have been made, that as a whole we have not lost but actually gained. It has not been for us to consider what price we would pay. There has been no price paid. It is a profit, and not a payment of price. We submit decisions of our own courts to an international tribunal. That is true. My lords, that only affects cases in which we have captured or arrested neutral vessels. Even if the international tribunal were biassed—an assumption which, I hope, will not be made in regard to all the great nations of the world—the subjects that the international prize court can deal with are not of such magnitude that they can vitally affect us. My noble friend Lord Desart said, in his admirable speech, much upon that point which was well worthy of reflection. On the other hand, whenever our vessels, being neutral, are captured or arrested, we have an appeal from the belligerent prize court to the international court, which we did not have before, and in either case, seeing that the great source of difficulty and embarrassment has been the friction arising between a belligerent and a neutral, it must be remembered that we have the means under this Declaration of avoiding friction with nations with which we are at peace, by referring disputes between us to this international tribunal. We also obtain by the Declaration the law which all prize courts are to administer. In regard to blockades we get substantially, I think, our own law. In regard to contraband we get better security for our food supplies than we might or probably should have had if foreign nations had been left to apply their own law. And in regard to the destruction of neutral ships we make a doubtful concession, having regard to our own previous practice, but we limit the rights now asserted by nearly all the powers of the world.

I would ask your lordships to bear in mind that we are not the only nation in the world. We are not the only maritime or commercial nation in the world. If we wish, as some writers apparently desire that we should, to stand by our own law even to the last jot and tittle, if we are to refuse such concessions in return for the advantages which I have endeavored to place before your lordships,

if we are to do that after we have ourselves been the people to invite the consideration of other nations, it would be treated as a defiance of the opinion of the world. It means an attitude of obstinacy and hostility; and although I am, and I hope always shall be, ready to vote the necessary supplies for the defence of this country, I am not sure that everybody would be ready to vote the necessary supplies if we are to take up the attitude which in some quarters we are asked to take up, instead of an attitude of reasonable, sensible, fair adjustment of difficulties. The other course is to agree with our neighbors all over the world and to remember that the points in difference, if you examine them, do not really as practical matters come to anything very great.

The EARL OF HALSBURY.¹ My lords, the noble and learned lord has given a note of warning that we must not discuss the construction of the Declaration lest we should put arguments in the mouth of our antagonists. It is very difficult to discuss the propriety or impropriety of any of the articles without knowing the construction that is to be placed upon them, and it will be difficult to show their injurious effect upon this country. The motion, I would remind the House, is not a motion to reject the Declaration, but seeks to establish a royal commission that this and other matters may be freely discussed before the very serious decision is taken of ratifying it. One of the most important parts of this question appears not to have been brought to the noble and learned lord's attention, for he attempted to correct Lord Desborough in his statement that this international prize court will make the law. What Lord Desborough said is perfectly accurate. M. Renault's report is treated by the Secretary of State as well as in the papers which accompany the Declaration as an authoritative document. Let me read to the noble and learned lord what M. Renault says:

The international prize court is called upon to make the law.

The LORD CHANCELLOR. What is the page?

The EARL OF HALSBURY. I have not got the original here, but only a copy. There is, however, no doubt about the fact. The court is to have no system of proofs, but is to "appreciate," whatever that means. Of all statements the boldest I have ever heard is that by this Declaration you will gain certainty in the law. Than this Declaration, and in face of the report of M. Renault, I can not understand anything more unlikely to secure certainty. Are we or are we not to have a new system of international law? Is it to be that the new international prize court is not to be bound by three centuries of legal

¹ The Earl of Halsbury, former Lord Chancellor, was a member of the extreme group in the Conservative party and one of the "Die-Hards" in the opposition to the Parliament bill. While less extreme than Lord Ellenborough, he was a determined opponent of the naval prize bill and the Declaration.

decisions, and that there is to be administered a new system of jurisprudence of which we have never heard before? It seems to me that we are now for the first time abandoning all those principles which have hitherto guided us and are making the Declaration of London the sole authority for the international court. We must disregard the authority of Grotius, of whom Hallam said that his work created a new epoch, of Story, of Pufendorf, of Bynkershoek, of Sir William Scott, afterwards Lord Stowell, and others. I deprecate that very much. It seems to me that we must first of all ascertain whether this accompanying document is or is not a part of the Declaration, because in the opinion of many persons it is a document which appears to modify the Declaration of London. A question to this effect has been asked, but I do not find that any answer has been given to it.

The LORD CHANCELLOR. I would like to know the page reference to the document to which the noble earl refers. I may say, however, that I agree with the answer given by Mr. McKinnon Wood in the House of Commons and by Lord Desart, that it is an official commentary which would be regarded by any court which would have the convention before it. I think that the convention is perfectly clear, for it says that the court has to recognize the rules of international law.

The EARL OF HALSBURY. I am glad to have that explanation, though I fear that it is not satisfactory. What I want to know is what is the nature of this document and whether it is to be accepted as being authoritative or not? The question has not been answered whether or not it is to be a part of the Declaration of London and what that Declaration is expected to include. But what seems to me to be important is to know the system of law to be administered. I gather from the noble and learned lord that the ordinary principles of international law are to be applied; but what about the proofs? Apparently there are to be no legal proofs and the court itself must appreciate what is put before it. But I do not know what that procedure is to be, not what the proofs are to be. Are they to be the ordinary proofs required in international courts, and, if so, what is the meaning of the disclaimers of proofs?

In my view the whole tone of this Declaration is very hostile to whatever power in the world happens to be the great naval power; and at present, at all events, Great Britain is that power. The noble and learned lord has truly said that our peculiar position as an island makes us particularly sensitive to any abridgment of our powers of supply; and the question is whether the Declaration we are asked to sanction does or does not assist us. The case of Bristol has been quoted. The great difference between that which is laid down in the Declaration of London and that which was the law before is that

by and in language reasonably clear foodstuffs could only be made contraband of war when intended to be supplied to a fort or to some place in actual military occupation and forming part, as it were, of the occupying military forces of the country. Now the Declaration of London has altered that; and any place which is a place of supply to the enemy is itself made a destination which would render foodstuffs absolute contraband of war. In the circumstances what would Bristol be? There would hardly be a more likely place for a military force, and if there was a military force in Bristol it would be within this Declaration. Instead of being really and truly a case of preventing supplies going to a military force it would be applicable to the whole civil population, and whatever might be the exigencies of the civil population in respect of food, yet because the food was going to Bristol which might form a base for military occupation, it would be within the Declaration of London.

I think that the noble and learned lord has overstated what the old rule was. It has never been admitted that foodstuffs were an absolute contraband of war, and Lord Granville protested against that view in the most energetic manner. If one goes through the different things that are altered by the Declaration it is impossible not to observe that the tendency throughout has been against Great Britain and not in favour of Great Britain. Having gone through with great care the book written by Mr. Bowles—to my mind an extremely accurate account, not overstated—I find that it is pointed out with great force that on every occasion what Great Britain contended for has been overthrown. Great Britain, therefore, is in a very different position from what it formerly occupied. I do not propose to discuss the Declaration of Paris. But while I deny the sacrosanctity of the Declaration of Paris or that it is impossible to get rid of it, I would observe that it was denounced by Mr. Bright, by Mr. John Stuart Mill, and other distinguished members of the party to which the noble viscount belongs.

THE LORD PRESIDENT OF THE COUNCIL (Viscount Morley of Blackburn). It is quite true that Mr. Mill did demur to it on the very curious ground that the more horrible you made war the less you would have of it; but he afterwards withdrew that opinion.

THE EARL OF HALSBURY. I read Mr. Mill's denunciation but not his withdrawal. Then there is the question of the conversion of merchantment into warships. That can be done at sea. Under former rules the fitting out was carried out at their own ports, but now merchant vessels can become warships during their voyage. If it happens to be fitted into a vessel which may serve as a warship it may lie in wait on a trade route and capture any ship it comes across. It may be said that that is to some extent affected by the Treaty of Paris, because it is in the nature of privateering. I do not think it would,

but I will not argue that point lest I should be arguing something to the disadvantage of my own country. But, again, what is the good of doing that which certainly can do us no good and which may be the subject of very serious injury to this country?

It seems to me that the whole theory has been something in the nature of a belief that if war were made very polite it could be got rid of altogether. I do not believe anything of the sort. People who believe in peace and are very fond of giving way have the oddest possible mode of trying to procure peace. I remember a very excellent clergyman who went to put a stop to a prize fight arranged by a party of colliers. He was personally popular, but many of the colliers who did not like their fight interfered with were inclined to treat him very roughly. When that was seen, his parishioners determined that he should not be ill-treated, and the result was that instead of the prize fight there was a riot of about 500 people, and I do not know how many were injured. This illustrates the method of people who are very fond of peace and believe in the perfect goodness of a human nature which I am afraid is too strong for them. I earnestly entreat the Lord Chancellor to consider the question of what law is to be administered and to give it the importance it deserves in considering whether we are or are not to look at M. Renault's report as authoritative. If the court is to "appreciate," whatever that means, and to determine not according to any fixed law, but according to their own views of what is to be done, so far from the Declaration leading to peace, I believe it to be one from which Great Britain may lose a great deal, while gaining nothing.

LORD REAY.¹ I take it that the object of the Declaration is an attempt to codify as far as possible certain rules of international law. In so far as there are no treaties binding the parties and no codification, it is obvious that the international prize court will apply the generally recognized rules of international law, and where no such rule exists the court shall give judgment in accordance with the general principles of justice and equity. Article 7 of the convention relative to the establishment of an international prize court imposes this procedure on the court. We can not expect to obtain from other powers a complete assent to our own interpretation of the rules of international law. It is quite clear that we could not insist on concessions being made by other powers which would cripple and paralyze their means of offense and defense, and which we ourselves should not make in a similar situation. Therefore, when we enter upon international negotiations on a question of this kind we must be prepared to give and take and to make certain concessions. We have to choose between using our influence to obtain the best terms we can in this

¹ Lord Reay was plenary delegate for Great Britain at the Second Peace Conference at The Hague, 1907.

process of codification, or remain outside and see doctrines sanctioned by international conventions to which we are no parties, and to which we are opposed.

Let us suppose that we decline to ratify the convention with regard to the international prize court, and that an international prize court is constituted on which we are not represented. The result would be that in the event of condemnation of one of our ships by a prize court of a belligerent when we were neutral, there would be no appeal. In addition, we should not be represented on the international court, whereas if we took part in its proceedings it would obviously be the duty of our representative to insist as far as possible that those principles which have been so admirably laid down by our prize courts should be adopted by the international prize court. This court will, of course, be composed of the best men who can be appointed by the various Governments who are intrusted with the selection, and this seems to me to give us every guaranty of that impartiality which at the present moment, when we are only liable to the jurisdiction of the prize court of the belligerent, we have not got. What has been our experience of arbitration courts in regard to the Venezuelan claims, the Japanese house tax, the Muscat dhows, the North Atlantic fisheries, and quite lately the Savarkar case? In all these cases the decision has been in our favor. There is no reason why the same result should not be anticipated when this international prize court is constituted on the same lines as the arbitration courts.

With regard to contraband, I am still of opinion that our proposal at the last Peace Conference to abolish it would have been the best solution. That proposal, which I had the honor, in accordance with our instructions, to submit to The Hague Conference, there met with the support of the majority, 25 powers giving their adhesion. I am quite aware that the powers who opposed it made it impossible for our delegates at the London conference to insist again on this abolition. But I regret that in this Declaration the power given to a belligerent to add by notification to the list of absolute and conditional contraband is not made subject to some limitations. For instance, it might have been considered whether the lists of absolute and conditional contraband should not have been left to a committee of The Hague Conference for periodical revision. But I submit that the absolute contraband list, which is the same as that which we settled at The Hague, and especially the free list, offer very great advantages to us. On the free list appear a great many articles in which we are very much interested.

As to the rules for conditional contraband, neutral ships with a destination to neutral harbors can not be captured. Therefore, if we are at war neutral ships will carry our supplies to neutral harbors in the vicinity of our shores, and thence we shall be able to protect

them on their way to our harbors. We can not rely only on neutral ships. We must rely on our own ships. In any case the question of our food supplies depends, and depends almost exclusively, on our superiority at sea and on keeping our lines of communication open. At the same time we shall derive this advantage, for instance in India, that in case of war neutral ships will be able to carry their supplies to Goa, whence India could easily be supplied; and if the United States are neutral, Canada would be supplied by her great neighbor. The doctrine of continuous voyage will in future, according to this Declaration, only apply to absolute contraband. I entirely agree with the argument used by my noble friend on the cross benches (Lord Desart) yesterday that the application of the doctrine of continuous voyage to conditional contraband, however logical it might be, would in practice offer such difficulties that it would prove useless. Besides, the friction which would result from the application of the doctrine to neutral trade would rouse the hostility of neutral powers at a time when, of course, our object must be as much as possible to conciliate them. With regard to the destruction of neutral prizes, after all that has been said by my noble friend on the cross benches I will not go into the subject; but I agree with him that the conditions imposed by the Declaration will make it in most cases almost imperative on the commanding officer of a belligerent cruiser to dismiss the ship in order to avoid the risk of having to pay heavy compensation as a result of subsequent adjudication.

Now, with regard to the conversion of merchant vessels in time of war on the high seas, that has not been prohibited. We have maintained our objection to the process, but it is quite clear that at the present moment there is no rule in international law to which we could appeal in order to get our view incorporated in the code. I would call the attention of the House to the fact that the convention which is known as convention No. 7, which we negotiated at The Hague imposes many limitations on the conversion, and in any case excludes the possibility of privateering being revived. The noble and learned earl who has just spoken admitted that the conversion was not affected by the Declaration of Paris. There is no reason to suppose that the converted merchant ships, if the conditions defined by the convention are carried out, will not be bona fide men-of-war. Moreover, the preamble of the convention states very definitely that—

the question of the place where such conversion is affected remains outside of the scope of this agreement, and is in no way affected by the following rules.

As the Declaration does not allude to this subject our attitude with regard to it is absolutely unprejudiced.

It seems to me that the objections urged against the Declaration are really objections directed against the whole policy of entering upon

any negotiations with other powers for the settlement of questions relating to international law. I think that the noble earl and his colleagues have every reason to be satisfied with the results they have obtained at the conference, especially with regard to blockade, un-neutral service, transfer to a neutral flag, and compensation. When I compare the results which he has obtained and those which we were able to obtain at The Hague, and the gaps which he has filled in which were left open at The Hague, I think the progress made after such a short interval is very encouraging for further agreement on points which have been left open at the London conferences; and I may inform the House that it is not only my opinion, but it is the opinion of my three colleagues at The Hague Conference—Sir Edward Fry, Sir Ernest Satow, and Sir Henry Howard—who are strongly in favor of the ratification of this Declaration. As to what has been said about M. Renault's report, I think it will be desirable, if the Government wish that report to be authoritative for the international court, that it should also be ratified by us and the other powers. There is a certain risk that without such ratification the international court will look upon that document as interpreting what the intentions were of the delegates to the London conference, but not as a document by which they are themselves bound in interpreting the Declaration of London. I submit that for the consideration of His Majesty's Government if it is their opinion that such authority should attach to the report.

There are at present two currents—one in the direction of settlement of international disputes by international agreement; the other in the direction of increased armaments. We can not ignore either without detriment to our national safety. If we abstain from joining these conferences, or make settlement or compromise difficult, we cause irritation among nations with whom we ought to be on friendly terms. To repudiate this Declaration would undoubtedly constitute a very deplorable precedent, and render it more difficult hereafter for our representatives to obtain amendments—this instrument obviously is not perfect—amendments which we might on a future occasion desire to obtain. I can not conceive a more impolitic step than the rejection of this Declaration and of the international prize court, after we have proposed the prize court at The Hague, and after we have invited other powers in London to consider what the rules should be which this court should observe in dealing with appeals brought before it.

A lurid picture is occasionally drawn of a conspiracy of the continental powers against us, and the delegates at The Hague, and now again our representatives at the London conference are accused of having surrendered important rights. I am sure that was not the impression of the foreign representatives, either at The Hague or at

the London conference. They were well aware that both at The Hague and London we vigorously maintained our rights, and only accepted such proposals as did not in any way weaken our means of offense or defense either as a belligerent or as a neutral. The conventions of The Hague conference and the London Declaration will enable us to vindicate our rights by means which at present we do not possess owing to the existing uncertainty of the law. What is that uncertainty? What did Mr. Royden, the chairman of the Liverpool Steamship Owners' Association, say on February 6? He said:

International law as it now exists is little better than a farce, and in too many cases justice can not be obtained at the hands of the prize courts of the captors.¹

That was the experience of the British shipowners during the last war in the Far East, and to remove that uncertainty and to turn international law from a farce into a code which can be understood and which can be enforced, has been the object of our representatives at The Hague and at the London conferences. I trust your lordships will be disposed to approve of the results they have been able to obtain after very exhaustive and protracted negotiations.

LORD ELLENBOROUGH. My lords, we are deeply indebted to international lawyers for the pains they have taken in establishing arbitration courts to settle minor disputes between nations, so as to prevent nations drifting into war when tempers have become irritated about trifles. I congratulate the noble earl on the cross benches on the results of his recent visit to The Hague. It is just on such occasions as that that international lawyers are able to render valuable service to their country. I wish them every success in their endeavors to improve commercial international law, and in every effort they may make toward insuring peaceful solutions of international disputes. But they exceed the legal limit when they try to dictate the rules of war. Then they get out of their depth.

International lawyers appear to have completely forgotten two ancient Roman maxims that I first heard of when a boy at school: *Inter arma silent leges*, and *Salus populi suprema lex*. These two maxims have stood the test of hundreds of wars and of 2,000 years of time, and will continue to be acted upon so long as human nature remains what it is. They knock the bottom out of the whole of the Declaration, of several of the conventions that have been recently ratified, of the theory—the cruel theory that private property at sea ought to be considered more sacred than human life, and that it can be made so by treaties. We have had distinct warning that Germany if hard pushed will treat this Declaration of London and the conventions as a mere collection of pious opinions. For Baron Marschall

¹ This speech, which was made at the annual meeting of the Liverpool Steamship Owners' Association on February 6, is given in *The Times*, London, for February 7, 1911.

von Bieberstein at the meeting of October 9, 1907, when discussing the question of automatic mines, distinctly stated:

Les actes militaires ne sont pas régis uniquement par les stipulations du droit international.

This straightforward and honest statement on the part of Germany shows that she, at any rate, will act on the principles laid down by the two Roman maxims that I have quoted, regardless of so-called international law.

I gathered from the answer by the Lord President of the Council that the Board of Admiralty had given an opinion to the effect that the establishment of an international court of appeal and of the Declaration of London would have but a small and inconsiderable effect in the conduct of naval operations. Well, I have found that many naval officers hold similar opinions, but the reason why they hold them is that they believe that the Declaration of London will be flung into the sea directly hostilities commence, and that it will count for nothing in a life-and-death struggle between any two first-class powers. If we keep up a strong navy, they think that all these deliberations and discussions between men who have studied law but have neglected the study of war, will count for little. They consider that all the tangles in the Declaration caused by dubious wording will be eventually cut by the sword. Although I share this belief, I am still of opinion that the Declaration increases our chances of getting into difficulties with neutrals, and therefore that it would be better not to ratify it.

The Declaration of London might, perhaps, be treated with respect if war broke out between two small sea powers like Greece and Turkey, whose ships would fight under the shadow of superior fleets; but no two first-class powers would allow this Declaration to interfere with their prospects of success in a life-and-death struggle. Even if they pretended to act in accordance with it, they would make important reservations. Should we ever sit down and starve, if we could bring food to Great Britain by tearing a sheet of paper to pieces? A belligerent is sure to justify his breaches of the treaty by accusing his enemy of some technical breakage. I should like to have an answer to this question before the treaty is ratified: If belligerent A disregards the Declaration, and, in consequence, obtains a considerable advantage over belligerent B, is the latter justified in disregarding it also as regards C and other neutrals? I am afraid that the answer would be that it is one of the numerous uncertainties of the treaty.

International lawyers have done a great deal of mischief by taking upon themselves to interfere with the strategy and tactics of our naval campaigns. Before they even know who our adversaries are

to be, or on what seas the conflict is to be waged, they have drawn up a series of conventions, of which there will be but little left after they have been put to the test of war. Article 3, chapter 2, of convention 11, says that fishing boats and small vessels engaged in local trade are to be exempt from capture. This is a matter which may be safely left to the humanity and discretion of the naval officers in command. But the convention goes on to say that—

The contracting powers bind themselves not to take advantage of the harmless character of these vessels in order to use them for military purposes while preserving their peaceful appearance.

I can only say that if any of our admirals relies on this paragraph to protect his ships he deserves to lose both his life and his fleet. It would in many cases be his duty to warn off all such vessels from the neighborhood of his fleet under pain of instant destruction or capture.

In the olden days, when no cutter or lugger dared to approach a brig, when no brig dared go near a frigate, when no unsupported frigate ever voluntarily came within reach of the guns of a line-of-battle ship, such a convention might have been workable. But nowadays weapons and tactics have changed. A vessel with the appearance of a fishing smack or local trader can sink a superdreadnaught with her crew of 800 men on board. It will be found impossible to respect this convention. Recollect that the North Sea is very foggy. Is not the case of our own seamen more worthy of sympathy than that of the enemy's fishermen? Recollect that those same seamen will be doing their utmost to save the country from starvation, and difficulties should not be thrown in their way by people who are foolish enough to think that they possess a monopoly of humanity.

Article 23 of convention 13 allows prizes to enter neutral ports and to remain there pending the decision of the prize courts, so that any captured British ships, whether we are at war or not, may be taken, say, to a South American port, and left there until judicial proceedings are over, which may last two years or more, instead of having to run the gauntlet of our numerous cruisers on her way to one of her own ports. This destroys all our chances of recapturing our own ships. I understand that Great Britain has reserved her assent to this article, and I hope she will never give it. It renders nugatory all the advantages that we have hitherto derived from the possession of harbours in all parts of the globe. Convention No. 11, in article 1, declares that postal correspondence, whether belonging to an enemy or a neutral, whether found on board a neutral or enemy ship, is inviolable, and is to be forwarded by the captor with the least possible delay. Imagine Nelson capturing despatches from Napoleon to Villeneuve and sending them on to him unopened "with

the least possible delay" in his fastest frigate! Had he lived now, he would have been expected to do so. But I fancy that he would have made use of his blind eye on such an occasion. History is full of stories of intercepted despatches, and of the use made of them. Novels and plays have been written on the subject. But the exigencies of war as regards England were not sufficiently considered in this convention by any but continental Powers, who, being weak at sea but powerful on land, left their power to make use of such intercepted letters unimpaired when captured on land.

International lawyers have undertaken the impossible task of laying down rigid rules for warfare on an element that is restlessness personified. But sea tactics change every day, as fast as fresh inventions are made. Naval battles have seldom occurred in mid-ocean, and their tactics have, in consequence, been affected by the neighbouring coasts, whether they be hostile or friendly, tideless or not, of easy or difficult access. Yet the Declaration ignores these matters. We should not put our trust in dreadnaughts alone. The country that has the best system of mine laying and mine sweeping may be the winners in the next war. At the conference Great Britain endeavoured to make automatic mines illegal, but Germany refused to comply with her wishes. In the case of war the North Sea will be full of mines. Some of them will break adrift. There is a convention that they are to become automatically harmless if they break adrift, but that does not affect them if they drag their anchors, and the mechanism for rendering them harmless may not work. No neutral will know by whose mine his ship has been sunk. The two belligerents will accuse one another of carelessness. With the North Sea full of mines prudent shipowners will make use of our western ports, and a considerable number of our east coast fishermen will be sweeping for mines instead of catching fish. "Night defence" is as yet an unsolved problem on which the last word has not yet been spoken. Experiments with searchlights and guns are constantly being carried out by our fleets for the sake of getting more practical experience. It is common-sense that a fleet must protect itself. Generals do not allow people in their camps without permission. The cruising ground of a fleet is its camp; and we ought not to sign away in time of peace rights that we must exercise in time of war.

In time of war we shall have to exercise territorial rights far beyond the 3-mile limit. If we wish to keep our fleets afloat we must put all neutral ships near our coasts under the same regulations that we shall lay down for our own, and enforce those rules under the penalty of seizure or destruction. We can never allow mines to be laid down or torpedoes to be discharged near our fleets by vessels disguised as neutrals. I am aware that correspondence is going on with

regard to the 12-mile limit that Russia is endeavoring to make in certain places. That is a peace question and though I believe we are quite right in opposing it because it opens up such immense possibilities, we must remember that it is a mere question of protection of fisheries at present.

Many naval men appear to think that if our navy is sufficiently strong the Declaration is of no importance, as it is sure to be put in the waste-paper basket by any powerful belligerent. I hold a different opinion, for if we reassert rights that we have signed away, we are far more likely to embroil ourselves with neutrals than if we merely continue to act on rights that are in accordance with what has hitherto been the custom of the sea. In dealing with neutrals we shall have an arguable case, but if we ratify the treaty we shall have no case at all. I agree with Lord Desart in thinking that we are not strong enough to insist on all the maritime rights that we possessed a century ago. If we have the misfortune to become belligerents, we must do all we can to avoid quarrels with neutrals; and we are more likely to succeed in doing this if, at the commencement of a war, we issue our own rules, declaring that, unless circumstances change, we shall not assert any maritime rights as against neutrals in certain seas, and only such rights as are absolutely necessary to our own safety in other parts of the world, thus leaving ourselves free to reassert such rights in more distant seas if the theater of war changed. Who would have thought that questions of neutrality would have arisen in Madagascar or Nossi Bé, until the Russian fleet reached those islands? Our seamen's hands should not be so tied as to make it impossible for them to save their country from famine.

Two naval men were appointed to assist Lord Desart and on account of that it has been assumed that they were in support of the Declaration. But what did the delegates say themselves in their letter to the Foreign Secretary dated March 1, 1909? They divested themselves of all responsibility. They said:

To what extent the rules themselves safeguard the legitimate rights and interests of Great Britain * * * are questions which we must leave to the judgment of His Majesty's Government.¹

From the above passage I gather that they had instructions to come to an agreement somehow, and that any agreement would be considered better than no agreement. These two naval officers simply obeyed orders, as they had been accustomed to do during the whole of their lives. They were apparently not appointed to give their opinions. Article 69 declares that this treaty is to continue in force until 12 years after ratification. By that time new inventions will have

¹ Report of the British delegates, March 1, 1909, *British Parliamentary Papers, Miscellaneous*, No. 4, 1909 [Cd. 4554], p. 93; Scott, *The Declaration of London, February 26, 1909*, p. 254.

completely altered modern strategy and tactics. Out-of-date and retrograde as this treaty is now, what will it be in 12 years? Surface men-of-war may have disappeared from the ocean and their places taken by mechanical inventions that no man can foresee. One year's denunciation ought to be sufficient. Recollect that we are playing with fire. If we fail to hold the sea our people will starve and we shall be obliged to submit to any conditions of peace. No amount of heroism can save us. Other nations would only be annoyed by a partial blockade, but we should be completely destroyed.

In the Foreign Office reply to the Edinburgh Chamber of Commerce, sent to them in November last, it is stated :

Instances have occurred in recent years in which a powerful belligerent has, with the approval of the other great powers, declared food supplies to be absolutely contraband, and such instances may, under present conditions, occur again at any moment in time of war.

Now, I take it that any nation that wishes to starve us will always claim the right to do so if it can, and that it will treat the whole of Great Britain as a beleaguered fortress, and assert that under the Declaration of London all ports in our island should be considered as bases for our armed forces. Bristol has been mentioned as being a place serving as a base for the armed forces of the enemy. I do not know much about the situation of Bristol now, because it has been many years since I was there. I know there was a naval volunteer corps there some years ago, and I think it may be found that there is one now. If that is the case, and people under the orders of the War Office of the Admiralty are settled or quartered there, that would make it a "base for the armed forces of the enemy." If the United States were to ratify this treaty it would give away its right to import food into this country as a neutral, whereas at present it is in a position to assert its right to do so if it chooses.

By not mentioning the subject, this Declaration, when considered with the preamble of convention 7, gives tacit permission to our enemy to convert merchant ships into men-of-war when on the high seas. Its right to do so when in its own harbors is, of course, unquestioned. But, strange to say, neither document says a word about their reconversion into merchant ships. Are enemies' ships to be allowed to capture or destroy our merchant ships when 3 miles from a neutral coast, and then to enter that neutral's harbors as peaceful traders, fill up with coal, and hoist a man-of-war flag an hour after leaving harbor? As they will claim that they are not warships they could stop in a neutral harbor for more than 24 hours and repair themselves thoroughly before sailing out again. All that such ships want is speed and an officer holding a temporary commission, who may never have served in a man-of-war and who may belong to a

neutral nation, but whose name will be put on and off an enemy's navy list as necessary. Any light, obsolete gun can stop or sink an unarmed merchant ship.

As it is claimed that, whether we agree to it or not, merchant ships will be converted into men-of-war when on the high seas, I think it worth while to point out that in a recent dispute with Russia on this matter we got our own way, and that the Russian converted cruisers went to one of their own ports in the Baltic to qualify as bona fide men-of-war. In the American Civil War a large proportion of the blockading fleets consisted of converted merchant ships. Towards the end of the war the fast, lightly-built blockade runners, when captured, were armed with guns, turned into blockades, and officered by men belonging to the Northern Volunteer Navy. When at war with Spain, the United States made considerable use of fast merchant steamers which were temporarily armed. Our commerce has much more to fear from armed merchant ships than from the few cruisers whose names appear in foreign navy lists. In addition to our fleets in the North Sea we require a sufficiency of cruisers to chase these armed merchant ships. Foxes do not stop to eat chickens when the hounds are after them. Formerly privateers had to send in their prizes for adjudication. The privateer of the future is to be his own prize court. Privateering is said to have been abolished, but what is a convertible volunteer fleet but a privateer fleet under another name?

I would almost as soon hear of a lost battle as of the ratification of this treaty. It gives away the results of many campaigns, both on land and at sea, without granting us any equivalent advantages. One of the chief faults of the treaty from a British point of view is that it appears to have been drawn up by men who, from perpetual reading of prize court records, had got their minds obsessed by ideas of single ship capture only, to the exclusion of stoppage of trade, which is the real object of maritime war, and which is most complete when no ships are seized at all but are laid up in harbor, because their capture is almost certain if they venture out to sea. The supporters of this Declaration consider that it adds an international prize court to the existing prize courts. On the contrary, the practical effect of article 49 is to abolish prize courts. This piratical article says that every officer in command of an armed ship becomes a prize court himself. He is a court of first instance, with power to burn, sink, and destroy any neutral ship carrying food to England. Small ships can not spare prize crews. The actual interpretation of the Declaration will rest with the naval officers of the enemy. Yet British naval officers will not have similar powers over neutral ships carrying food to an enemy power on the Continent, because the food

will be disembarked on neutral territory, within easy reach of that enemy's frontier. It is a one-sided treaty, suited for a continental power with neutral harbors close to it, but unsuited for an island whose frontiers are all on the sea. The victorious belligerent, whose success may perhaps have been due to his having disregarded the Declaration of London, might put a clause in the treaty of peace, making the vanquished nation liable to all the pecuniary damages that would otherwise have to be paid by the successful country, and then the possible decisions of the international court would have no further influence.

Another point appears to have been forgotten, which is at the conclusion of the war one of the belligerents may have become bankrupt, or refuse to pay. *Ou il n'y a rien, le roi perd ses droits*, or one of the belligerents may have ceased to exist, as was the case when the American Civil War came to an end. The reunited States then claimed all the property in neutral hands that had belonged to the Southern States, but declined to pay off any of their liabilities. Article 9, section 2, says:

The geographical limits of the coast-line under blockade must be announced.

But the distance from the coast within which blockading rights may be exercised is not mentioned. This remains unsettled and is likely to be much disputed. Article 17 says:

Neutral vessels may not be captured for breach of blockade except within the area of the operations of the warships detailed to render the blockade effective.

This is delightfully vague. Our blockading ships would be stationed anywhere between the Shetlands and the Scilly Islands, or even Finisterre. But would the international prize court admit of our declaring our own limits of blockade? Or would the distance be anywhere within the radius that a blockader could steam without replenishing fuel? Would not the blockader summon other ships to join in the chase by wireless? According to article 20 it appears to depend on the amount of coal a blockader may have in her bunkers. Article 18 says:

The blockading forces must not bar access to neutral ports or coasts.

This is entirely in favor of continental countries, where belligerent and neutral coasts may touch. Islands do not get a chance. Article 32 says:

Where a vessel is carrying absolute contraband her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers.

Ships' papers in war time do not give reliable evidence. During the Revolutionary and Napoleonic wars most ships carried two sets

of papers, one to show to French officials, the other to show to British cruisers. Many of the Northern ships had British as well as American papers during the Civil War. There is also such a thing as "carrying truck," which means shipping cargo without entering it on the ships' papers. It used to be done on badly managed lines, officers or petty officers receiving tips for cheating their owners.

As the effect of articles 33 and 34 has been thoroughly explained by Lord Desborough and the Earl of Selborne I shall not say much about them. Article 33 declares conditional contraband liable to capture if it is destined for the use of a Government Department of the enemy State. But the words in French, the only binding language of the treaty, are, *ou des Administrations de l'Etat ennemi*, which would include county and parish councils, water boards, poor-law authorities, and cooperative stores, because they supply regimental canteens and officers' messes. If it had been intended to exclude these and similar bodies words to that effect ought to have been added to this clause. Article 34 also declares goods liable to capture if consigned to a trader established in the enemy's country, or *une place fortifiée ennemie, ou d'une autre place servant de base aux forces armées ennemies*. Why, all England is the base on which our armies and fleets depend, and our whole country becomes a beleaguered fortress, depending on her supplies of food from other countries the moment that war breaks out. Besides, most of our mercantile ports have some slight fortifications to protect their entrances. Article 46 provides that—

A neutral vessel will be condemned and in a general way receive the same treatment as would be applicable to her if she were an enemy merchant vessel, if [says section 4] she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

As regards "exclusively engaged in the transport of enemy troops," how can you prove "exclusively"? It would be sufficient to have half a dozen passengers on board to disprove "exclusively." Then, again, "exclusively engaged in the transmission of intelligence in the interest of the enemy." How do you prove that? She has only to pretend to catch fish to make herself immune from capture. Article 48 says that a neutral prize must be taken into port to determine the validity of her capture, but article 49 says that she may be destroyed if the observance of article 48 would interfere with the success of a warship's operations. It would be very seldom that a prize could be sent in. Large crews are required nowadays—a crew for the upper deck and one for the stokehold. In the olden days they had very few men, and by never setting too much sail three or four men could manage to handle a very big sailing ship and bring her in if there was no hurry, but nowadays it is different.

The Foreign Office reply to the Edinburgh Chamber of Commerce in November last stated that—

at the present moment neutral merchant ships are in practice liable to be sunk unconditionally by a belligerent man-of-war.

I am aware that in the Russo-Japanese War four British vessels were destroyed by the Russians without being taken before a prize court, but is that a sufficient reason for altering the law? If a few burglaries had taken place without its being possible to arrest the criminals, would that be a sufficient reason for legalizing burglary? By the capture and destruction of the *Knight Commander* the Russians gained their object for a while. By destroying one ship they frightened and postponed the sailing of other vessels loaded with railway iron, and, by so doing, delayed the construction of Japanese military railways in Manchuria. These matters are not merely questions of *l. s. d.* to be settled some years later by a court party composed of mulatto judges, who wish to sit forever on a salary of 8 guineas a day. The effect of the capture of a ship often has an immediate result. What can the subsequent decisions of an international prize court matter to a people half of whom have been starved to death by such captures? It will not bring the dead back to life.

Article 55 renders invalid the transfer of an enemy ship to a neutral flag after hostilities have commenced. I may mention as a matter of history that during the American Civil War hundreds of Northern ships were transferred to the neutral flag of Great Britain, who made no profit out of the transaction. They remained under American ownership with American captains and American crews. There was nothing British about them except the flag. Articles 61 and 62 make a hard-and-fast rule that the presence of a neutral commissioned officer on board a neutral warship protects a whole fleet of neutral merchant ships. There are cases, perhaps, where it ought to do so, but if made into a fixed and unalterable rule I think it far more likely to drag us into a war with a neutral than to keep us out of it. The belligerent should make his own rules at the commencement of a war, and it would not be wise of him to make them too hard on a neutral, unless absolutely necessary, and then only in certain seas.

Then as to the tribunal. While guns are being fired I do not believe in its being possible to form an impartial international tribunal. You must go to some other planet if you wish to find an impartial tribunal in time of war. When a fight is on, all nations sympathize more or less with one side or the other. Could we have trusted the impartiality of the Belgian courts that acquitted Maj. Lothaire and Sipido? Or German judges during the Boer War? When I first saw the list of countries that were to provide judges I thought

that I had got hold of a rough draft of a comic opera, and when Lord Desborough read the list of them the House laughed. I have dealt with this question from the belligerent point of view only, because the losses that we may incur as neutrals are mere trifles compared with the risk of total destruction that might happen to us in war if our food supply is interrupted. How small were our losses in the Russo-Japanese War compared with what our losses and expenses would have amounted to had we waged war with either, even if we had been successful?

A pamphlet by Mr. Bray has been much praised by some of the supporters of the Declaration.¹ At page 25 he says that the case of a neutral ship being inside a blockaded port and attempting to come out and succeeding in eluding the watchfulness of the blockading fleet is exceedingly remote. Had Mr. Bray visited Habana, Bermuda, or Nassau during the Civil War in America, or even if he had ever read a naval history of that war, he would never have written that paragraph. Besides, the reason why ships are more often captured when going in than when going out is that egress is a much easier operation. You wait for a rainy or a foggy night and then slip out and find yourself 120 or 150 miles off by daylight, whereas to come into a harbor you have to hit the mouth of it exactly on a dark night in thick weather. If you fail, you have to steam along the coast and then you are very likely to be caught by the blockading squadron. Many blockade runners were wrecked on attempting to enter the Confederate harbors. It was the dangerous part of the business. At page 60, as regards articles 49 and 50, Mr. Bray assumes that as all persons on board a neutral ship must be placed in safety before she is destroyed, the presence of another neutral ship to which they can be transferred is a practical *sine qua non*. Had those who drew up the Declaration meant this they ought to have stated it clearly. Any captor would consider his own ship a place of safety for the present. Whether she would continue to be so two hours later is another matter. The Russians took some of the crew of the British vessels that they sank to Vladivostok with them. Mr. Bray may have studied a large number of prize court cases, but he has evidently never studied war, and therefore his opinions on the Declaration can not be considered of much value.

The Lord Chancellor said that one of the chief reasons why this Declaration was needed was to lessen the uncertainty of shipowners in war time. There can be no more certainty in war than there is about the winner of a horse race. Shipowners might as well ask for the moon as ask for certainty. The unexpected is bound to occur. Already the interpretation of nearly every article in the Declaration is in dispute. The important question as to whether the

¹ *British rights at sea under the Declaration of London.* London, 1911.

lengthy report that accompanies the Declaration has any legal value or not is a matter on which two of our most distinguished international professors, Messrs. Holland and Westlake, hold contradictory opinions, and they have both of them many supporters. The fact is that international lawyers have attempted an impossible task, and have failed. Had they studied war as much as they had studied law they would have known that they were attempting an impossibility. Their failure is not as conspicuous now in time of peace as it will be in time of war.

To conclude, while giving full weight to the objections made to the Declaration by others, my chief objection to it is that if we act in accordance with it our inability to deal with real neutrals will leave us at the mercy of sham neutrals in the North Sea, who will be able to lay mines and use torpedoes in such a manner as to destroy our best ships before they have a chance of meeting the enemy's battleships. Recollect that the Japanese lost two of their first-class battleships in one day, and that the Russian flagship was blown to pieces by a mine which exploded under her magazine. Her best admiral, Makaroff, and the greater part of her crew perished with her. Are we to increase our chances of similar misfortunes happening to us by ratifying this treaty? If we ratify this treaty and then disregard it, as we positively must, we shall greatly increase our chances of quarreling with neutrals, the one thing we must try to avoid if engaged in war. If we have the misfortune to be engaged in war we must trust to our own strength on sea and on land, and to a diplomacy based not so much on former belligerent rights as on tact and common sense, to bring us with safety through our troubles.

LORD WEARDALE¹ My lords, I am sure the noble lord will excuse me if I do not deal at any great length with his speech. In the early part of his oration he made the remarkable declaration that, in the event of war, the bottom would immediately be knocked out of the Declaration of London. Consequently I am bound to say I can see no useful purpose in discussing his comments upon the provisions of the Declaration, because in his view it is mere waste paper. But I am very glad that the noble lord has spoken, for he represents a class of opinion that has not been fully represented in the course of this discussion.

This debate upon a subject of the gravest international importance has remained upon a level worthy of a great question, and I desire to bear tribute to the excellent speech of Lord Desborough, who gave expression to the views of a considerable section of the mercantile community with great moderation, prudence, and reserve. But I

¹ Liberal. After sitting in the House of Commons for a period of twenty years, the Honorable Philip J. Stanhope was raised to the peerage in 1915 and took his seat in the House of Lords as Lord Weardale.

think it must be admitted that outside this House, and for a long period of time, there has been going on another kind of agitation. I read in the *Morning Post* of December 3 that the Declaration of London was "a sword for the Unionist Party"—that is to say, it was to be used as a party weapon in connection with matters which ought to be, and I hope will remain, above all party considerations. That is not all. In going through the streets of London your lordships will have seen upon the walls a most reprehensible picture which is based upon an entirely incorrect view of the Declaration, and which, I regret to say, bears upon it the authority of a Member of Parliament—Sir William Bull.

And, in addition to that, we have the very vehement protestations of the Imperial Maritime League, which has issued a very lengthy pamphlet with regard to which I should like to make one or two comments. This is what the twin founders and twin honorary secretaries of the Imperial Maritime League say in the course of a discussion:

Mr. Balfour should be called upon definitely to state, on behalf of the Unionist Party, that, if they are signed by the present Government, they will be denounced by the Unionist Party the moment they return to power, and that along with that denouncement of the Declaration of London there shall be by the Unionist Party a denouncement alike of the Declaration of Paris of 1856.

That is merely to adopt the attitude taken up by so capable a gentleman as Mr. Gibson Bowles. He has always been an opponent of all kinds of restrictions on naval warfare. He, as a bold buccaneer both in Parliament and on the ocean, prefers a condition of free piracy upon the high seas; and in regard to that I was rather amused to hear the noble and learned earl the ex-Lord Chancellor go back to the days of his boisterous youth and express preference for a condition of warfare of that character, because he seemed to quite concur with the views of Mr. Gibson Bowles.

But what I would desire to point out is that this declaration is opposed on two grounds diametrically opposed to one another. In the first place it is denounced by the noble lord opposite and his friends from what I may call the naval standpoint, although the remarkable contributions from Sir Cyprian Bridge, an admiral of the highest distinction, shows that it is by no means the unanimous view of the navy. Then there is the opposite view that by this Declaration we are doing some grievous injury to the rights of neutrals. If I thought for one moment, and I am sure the feeling is shared by every one who considers this question, that we by ratifying the Declaration were doing, or likely in the smallest degree to do, any injury whatever to the great interests of this country, I would not raise my voice and I do not think a voice would be raised in favor of that ratification. It is because we conscientiously be-

lieve that, in the first place, as was shown so ably by Lord Desart last night and by the admirable contribution of the Lord Chancellor to-day, the rights of belligerents are carefully preserved, and that, in the second place, the position of neutrals is considerably improved, that we hold the view that the ratification of the Declaration will be for the general advantage of all classes of the community.

I do not intend at this late hour and after the excellent speeches we have heard to labour this point at any detail. I will merely say that it is obvious that the laws respecting blockade have now been more accurately defined than ever they were before. I do not think there is any question as to that. The law affecting contraband has also been more clearly stated, inasmuch as we have now three distinct categories approved by all the powers who were parties to the Declaration. And, above all—and I think this is a matter of the utmost advantage—we have set up a neutral appeal court. There is a great deal of talk outside this House, though I admit there has not been so much inside this House, about the lamentable situation that will be created by committing the interests of our country to a foreign court. But what happens to-day? If our vessels when neutrals are seized in time of war by a foreign nation, is the matter adjudged by our courts? Not at all. It is adjudged and finally decided in the court of the captor. The setting up of a neutral appeal court is of immense advantage in the interests of neutrals, inasmuch as it gives them an appeal to an authority outside the area of conflict. And when people sneer at neutral appeal courts I would have them remember that this country in the course of the last 10 years has owed much to neutral courts. It was in consequence of successful appeals to a neutral court that the Dogger Bank incident was settled without a conflict, although that contingency was a very near one, between ourselves and the Russian Empire. And more recently the great controversies that surrounded the Newfoundland fisheries, which have baffled diplomatists for over 70 years, were settled by a neutral court presided over by a very distinguished Austrian jurist. Our experience of neutral courts ought to render us most thankful to have an international prize court called into existence.

I wish to say one or two words in connection with what was said by the ex-Lord Chancellor, Lord Halsbury, in answer to the noble and learned Lord on the Woolsack. He called attention to the fact, in which he corroborated what Lord Desborough stated, that in the report of M. Renault it is said that the prize court is to make the law. But surely that must be taken in connection with the general situation. Now what is the general situation set up by the Declaration? In the first place the international prize court is to be guided by the ordinary principles of international law, and in the second place it is to be guided, and, of course, can only be guided, by the

stipulations in the Declaration itself; and on points which may give rise to doubt it is to be governed by justice and equity. In the sense that it is to be guided by justice and equity it doubtless will, in a way, make law. The international prize court will, in the future, although I hope that circumstances will make it increasingly unnecessary, make precedents and make law; and we can only rejoice that there will gradually be set up a recognised code of international law instead of the chaotic conditions which exist at the present moment.

It is quite unnecessary, after what has been said, that I should go into the provisions of the Declaration in any detail, but I would point out that the Declaration of London is but a sequel to the work of The Hague Conference. Since the beginning of the present century there has been set up a system—I think a very hopeful system—of international conferences which I believe in the future is going to be of the greatest advantage to the civilized world. In consequence of the decisions of The Hague Conference we have been brought nearer to many powers with whom we had causes of estrangement, notably with America, in which case, I am very glad to say, causes of irritation and constant difficulty have been finally removed. It will be remembered that in connection with the last conference at The Hague, when the question of the prize court was examined, it was urged on behalf of Great Britain that before such court could be set up it was desirable to establish certain general principles upon which the court should act. Surely that was a very wise provision to be made on the part of the Foreign Office, and it was upon that foundation that the conference of London took place and the Declaration of London was drawn up.

Certain members of this House now call upon us to repudiate this Declaration. We are to say that practically the whole of the course taken by us in the matter has been a mistake. We are to tell the powers whom we invited to this conference that we refuse to agree to, and that we withdraw from, the agreement that we proposed to them to formulate in association with ourselves. What would be our position in the eyes of civilised nations if Great Britain, having initiated this matter on grounds which I think were perfectly right and proper, were now at the eleventh hour to withdraw? If this declaration is examined fairly and temperately, as I agree it has been examined in many quarters of this House, it will be found that the balance of advantage is enormously in favour of Great Britain both as a belligerent and also as a neutral. I am one of those who look forward to this Declaration of London and the international prize court as leading to something more. I look forward to the day, which, I think, will not be very far distant, when we shall be able to make some progress towards the total abolition of the right of capture and establish the immunity of private property at sea, to

which this is an absolutely necessary preliminary step. It is in that direction that the trading and commercial community of this country should set their eyes; it is to that task they ought to brace their energies.

THE EARL OF DUNRAVEN.¹ My lords, I am sure that every one of your lordships will agree with the noble lord opposite that not a single member of this House would support the Declaration of London for a moment if he thought that by so doing he might inflict the smallest damage or detriment to the interests of this country. And I am sure we would also agree with him as to the great advantages this country has derived from referring to arbitration matters that might have led to disputes and wars. But surely there is very little in common between referring matters in dispute and which might lead to war to arbitration and the matter which is before your lordships to-night—the ratification of a Declaration dealing with the rights of belligerents and neutrals during a war and the setting up of an international prize court of appeal. I agree with the noble lord opposite that a good deal of intemperate language has been used and written on this subject. After all, what the Government are now asked to do is to remove this question altogether from the possibilities of heated argument by appointing a royal commission of inquiry to go into the whole matter dispassionately and quietly, and report as to what, in their opinion, the effect of the declaration upon this country would be in the unfortunate event of war, whether as a neutral or as a belligerent.

I listened, as I am sure we all did, with the greatest attention to the admirable speech of Lord Desart, and to the equally admirable speech of the noble and learned Lord on the Woolsack. The Lord Chancellor, always persuasive, almost persuaded me, but on this occasion he did not absolutely persuade me; nor did Lord Desart, and chiefly because neither the Lord Chancellor nor Lord Desart appeared to me to attach any importance whatever to what seems to me the enormous difference between assenting and dissenting. The speech of Lord Desart was, to a large extent, apologetic. He said the Declaration of London and the institution of an international prize court would be of considerable advantage to us as a neutral, and he thought there would be very little detriment to us as a belligerent. He argued that in any case we could be no worse off than we are now, but he attached no importance whatever, nor did the Lord Chancellor, to the enormous influence that a strong and determined neutral can exercise. Surely there is an immense difference between the position of independence we were in before and the position we shall occupy if we assent to the various articles, some of which have been signed and ratified in many of these conventions, but some

¹ Conservative.

of which have not been signed and are not yet ratified. To a certain extent we have tied our hands, and the question is whether in doing so we gain advantage or suffer disadvantage. The Lord Chancellor is of opinion that all that a neutral can do is to diplomatically expostulate, and, if that fails, to resort to war. But surely between the two extremes of a declaration of war and a mere polite diplomatic note there is an enormous opportunity for a strong and powerful and determined neutral to make its view heard and felt and respected.

There is only one point that I really wish to allude to for a moment, although it has been very fully discussed already, and that is the question of conditional contraband. The Lord Chancellor has told us that in his opinion food and the other articles of conditional contraband could certainly be brought into this country if we were a belligerent. He said they could be brought into many ports in the United Kingdom, and he mentioned one—Bristol. If the noble and learned Lord on the Woolsack was the commander of a hostile fleet I would be perfectly satisfied. I do not mean that to be in any sense derogatory to his lordship's capacity as a naval commander, but I would be perfectly satisfied that he would construe these articles in a just manner, and that at any rate, though they might not be favorable to us, he would be just. But, of course, he would not be in that position, and it seems to be self-evident and scarcely worth arguing that the commander of a hostile ship, whether German, French, Russian, or whatever he might be, in the strain and stress of war would not only think it permissible, but would think it his absolute duty, to say that a consignment of food to any of our ports was a consignment to a port which would be used as a base of supply for a Government department, or for the military forces, or for the revictualling of the fleet. Infallibly he would do so, and infallibly his own Government would justify him. If the international prize court thought otherwise we might get a small money compensation, a few thousand pounds, four or five years after the war had been finished, and it would be finished probably owing to our own starvation for want of food.

Does it not really come to this? Food and the other articles of conditional contraband can be supplied to any continental nation at war without any very great expense to them either by rail or water carriage through delivery at a neutral port which may be close or comparatively close to their own frontiers. But food could not be brought to any port in the United Kingdom because it would be considered by naval commanders to be contraband, and if brought into a neutral port it would have to be transmitted again by sea and run all the dangers of capture or destruction. Practically, there-

fore, the position established by the Declaration is this—and I do not see how it can be denied—that when we are at war food would be contraband so far as we are concerned; while food as far as any continental nation at war with us is concerned would not be contraband of war. Surely that puts us at an enormous disadvantage. As to the other matters which have been decided in some of these conventions—I could mention a long list of them, but I do not think it necessary to do so—I will allude to only one that has been mentioned, namely, that belligerents can take neutral ships and place them in neutral ports. That is no advantage to us. We have ports all over the world, and can take captured ships to our own ports. To be able to take captured ships to be retained in neutral ports is an enormous advantage to every other nation which is at war, for it diminishes greatly the chances of the recapture of those ships.

Take also the question of the conversion of traders into men-of-war at sea. We objected to that. The Lord Chancellor has told us so. But, though we objected to it, we assented. When it becomes part and parcel of the Declaration of London we shall have agreed that it is a proper thing to do. We need not do it, but we shall be at a still greater disadvantage. We shall have declared that we consider it a proper thing that merchant ships, ordinary traders, should be converted on the high seas into warships. That is an enormous advantage to any nation that subsidises liners all over the world, while it is of very little advantage indeed to us.

THE LORD CHANCELLOR. If the noble earl will excuse me, I must point out that we have not assented. The Declaration does not deal with it.

THE EARL OF DUNRAVEN. My point is this, and I am glad to be corrected if I am wrong. I know the Declaration has not settled anything about it. But no declaration having been made upon it, do we not commit ourselves to the idea that the thing is legitimate and can be done?

THE LORD CHANCELLOR. We opposed it, and therefore no declaration has been made.

THE EARL OF DUNRAVEN. But in accepting it could it not be said that we allowed it to go by default?

LORD SANDERSON.¹ The convention on the conversion of merchant ships into ships of war states distinctly that it has been impossible to arrive at agreement on this particular question. That sufficiently shows that we did not agree.

THE EARL OF DUNRAVEN. I do not press the point. If we accept the document with this condition we can not in future say it is an

¹ Conservative. Lord Sanderson had had a long career in the Foreign Office and served as Under-Secretary of State and assistant agent on the Alabama Claims Commission.

improper thing for anybody else to do this. If we do not do it ourselves we shall be at a still greater disadvantage. This Declaration sets up an international court. I do not propose to say anything on that. The legal aspects have been dealt with so admirably by the noble and learned Lord on the Woolsack and by Lord Halsbury that I will say nothing on that point at all. But the Declaration of London must be looked at, not only by itself, but also in connection with all the other agreements that have been come to, some signed and ratified, some signed and not ratified; and if that be done, I find it very difficult to understand how any reasonable man can deny that the general tendency of all the provisions is to the advantage of powers that are weak at sea and to the disadvantage of powers that are strong at sea, and as we are, or think we are, the most powerful nation at sea they are, taking them together, to our disadvantage.

I do not know whether His Majesty's Government are going to grant a royal commission to look into this matter. I hope they are. We know very little of what expert opinion is on the subject. The noble viscount opposite, the leader of the House, gave us the opinion, or rather an opinion, of the Board of Admiralty on the subject. It would, of course, be very interesting to know whether that opinion was given after the fact was accomplished or whether it had been given before any of these arrangements were agreed to. It would also be interesting to know whether that opinion was given merely on the question of setting up an international prize court and on the Declaration of London, or whether it was given in reference to all the conventions. The noble viscount told us that it would not be to the public interest to go into that matter further. Of course, I say nothing further about it. But I take the opinion that the noble viscount gave us. He said that the opinion of the Board of Admiralty was that as things are at present the effect upon us as a belligerent of the institution of the international prize court and the Declaration of London would be small and inconsiderable. Well, I take it at that—the effect would be small. But in the extremely precarious position that this country must be in in the event of a great war, and in view of the consequences, not only to ourselves, but to all the constituent States of the Empire, is it a wise thing to take a risk, however small it may be, or to in any way diminish the powers we now have?

We are in an extraordinary position. No other great nation is in a position to lose so much as we are. If we are unfortunately driven into a war our only means of bringing that war to a speedy and successful issue is by the use of as much economic pressure upon our enemy as will compel him to stop hostilities by harassing and destroying his commerce and trade at sea. That is our only weapon of offense, and while hostilities are going on we have to depend for our daily bread upon an enormous and almost daily supply of food.

However small and inconsiderable it may be, to in any way take away from the powers we have hitherto exercised, or to diminish them, is to incur a responsibility which, I submit, ought not to have been taken by His Majesty's Government without at any rate ascertaining the views of the great dominions upon the subject, and certainly not without acquainting Parliament, and through Parliament the country, with the details and the possibilities and the probabilities of all the arrangements that His Majesty's Government desired to enter into.

On question, debate adjourned to Monday next, and to be taken first.

House adjourned at half past 7 o'clock, to Monday next, a quarter before 11 o'clock.

HOUSE OF COMMONS.

MARCH 9, 1911.¹

DECLARATION OF LONDON.

Mr. Butcher asked whether there is any instance in the last 30 years in which foodstuffs carried on a neutral vessel have been condemned by a prize court of any nation as absolute contraband of war; and, if so, when and by whom.

SIR EDWARD GREY. I am not aware that such cases have actually occurred. Foodstuffs were not condemned as absolute contraband in the prize courts of either Russia or Japan, but if the honorable and learned member will refer to the question asked by the honorable member for Central Bradford yesterday, he will see that in various cases during the Russo-Japanese War foodstuffs were condemned without any clear proof that they were intended for Government use, and when they were shipped under conditions which afforded no satisfactory reasons for assuming that they were so destined.

Mr. BUTCHER. Not on the ground that they were contraband?

SIR EDWARD GREY. Not on the ground that they were contraband, but without any proof that they were.

Mr. Butcher asked the Secretary of State for Foreign affairs if he would state which, if any, of the articles enumerated in article 28 of the Declaration of London as not capable of being declared contraband of war have been within the last 30 years declared contraband of war; by what powers and under what circumstances; if he would say in what instances within the last 30 years any of the articles so enumerated have been condemned by a prize court as contraband of war; and whether any of the powers represented at the

¹ 22 H. C. Deb., 5 s., 1370.

naval conference in London claimed at such conference to exclude any of the articles so enumerated from the provisions of article 28.

SIR EDWARD GREY. Cotton is the only article included in the free list in article 28 of the Declaration of London which has been definitely declared by a belligerent to be contraband within the last 30 years. On 8th April, 1904, a supplementary imperial order was issued by the Russian Government that cotton should be included amongst the articles declared to be contraband in the notification of the 14th of February, 1904; and cotton was condemned as contraband in the Russian prize courts in the cases of the *Calchas* and the *St. Kilda*. I find that there were other articles which were condemned in the prize courts of first instance during the Russo-Japanese War, but in regard to which the decisions were subsequently reversed on appeal. Amongst them may be cited the following: Paper, knitting machines, glassware, window glass, paint, aniline dyes, wearing apparel, copra, hemp, camphor, bristles, chairs, old india rubber, varnish, tanned sheepskins and hides. In some cases these final decisions were not pronounced until long after the war had ended, and the object of the free list is to ensure that the shipping trade of neutrals shall not be dislocated by the capture of goods of this kind, which can have no connection with the military operations of the belligerents. No article could have been inserted in the free list against the wish of any of the powers represented at the naval conference, but some of the articles ultimately included were objected to in the first instance by some of the powers, for example, the important article of cotton.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether he is aware that the Probate, Divorce, and Admiralty Division of the High Court of Justice sitting as a prize court has jurisdiction throughout the whole of His Majesty's dominions and has power to enforce its orders against our fellow subjects within its jurisdiction; whether he is aware that there is a large number of decisions of the prize courts of this country in which the law of nations of particular points has been declared and applied by those courts, and orders have been made and enforced against our fellow subjects in accordance with the law so declared, and that the law of nations so declared by our prize courts constitutes the unwritten law to which our prize courts are bound to conform in giving their decisions, unless and until an alteration has been made therein in such a manner as to become binding on our fellow subjects; whether an alteration in that unwritten law can be made binding upon and enforced against our fellow subjects by a treaty or convention made in the exercise of the royal prerogative without the authority of Parliament; and, if

the answer to the last question be in the affirmative, whether, in view of modern constitutional usage, it is intended to make alterations in such unwritten law which may injuriously affect our fellow subjects without the authority of Parliament.

SIR EDWARD GREY. The answer to the first three questions is in the affirmative. That to the last is in the negative, inasmuch as, although I do not admit that any provisions of the Declaration of London could have the injurious effect referred to, I have already stated, in answer to a supplementary question asked on 18th November, 1910, that the consent of Parliament is constitutionally not necessary to the ratification of the Declaration of London, but, as is well known, no Government would advise His Majesty to ratify a convention against the declared opinion of the House of Commons.

Mr. BUTCHER. In giving that answer has the attention of the right honorable gentleman been called to the case of Walker and Baird, which has been brought before the Privy Council?

SIR EDWARD GREY. My attention has not been called to it.

Mr. BUTCHER. Will the right honorable gentleman consult the law officers?

SIR EDWARD GREY. If the honorable member will put down a question, an unstarred question, so that I can be quite sure what he refers to, I will then consider the point.

HOUSE OF LORDS.

MARCH 13, 1911.¹

DECLARATION OF LONDON.

Debate on the motion of the Lord Desborough to resolve, That in the opinion of this House, it is desirable that a royal commission be appointed to report on the advisability of this country agreeing to the terms of the Declaration of London resumed (according to order).

LORD RITCHIE.² My lords, I rise to address your lordships on this subject with some diffidence, because I disagree very largely with the views which have been expressed by every other speaker on this side of the House. I am bound to confess that when I first read the criticisms that appeared in the public press I began to fear that the British delegates must have been of an extraordinarily accommodating temperament, and that the representatives of the foreign powers had entered into some dark conspiracy to rob this country of its most cherished rights at sea while they themselves gave away nothing

¹ H. L. Deb., 5 s., 432.

² Conservative.

which they considered of value to themselves. So, my lords, I thought I had better study the other side of the question, and, having done so, I have arrived at the conclusion that, so far from our delegates having abandoned anything that was of supreme importance to this country, they were very fairly successful in persuading the delegates of foreign powers to compromise on many of the questions which they had hitherto regarded as of value to their own countries.

The ignorance of the public generally on this question is astonishing, and I had an illustration of that fact only last Thursday evening when I left this House. I happened to meet a friend of mine who is at the head of a large and important mercantile house in the city of London. I told him we had been discussing the Declaration of London, and his only comment was this, "I do hope you are not going to truckle to those German fellows." I did not attempt to argue with him. I merely asked him whether he had studied the Declaration. "No, he had not had time, but he had read some of the criticisms that had appeared in the newspapers." I asked him whether he did not consider it of great value to his own firm and to firms such as his own that in future there would be a free list—a list of articles which in no circumstances could be declared contraband of war. I pointed out to him that some of the articles named in that list were articles in which he himself was interested, and that they included one or two which were not only susceptible of use in time of war but were absolutely essential to the conduct of warlike operations on any large scale. He admitted that he had never heard of the free list, and that it undoubtedly would be of very great advantage. Here, my lords, was a man who had formed his opinion entirely from the criticisms he had seen in the public press. Those criticisms have been to a large extent misleading, and they have also been mutually destructive.

There is one class of critics who starts by advocating the denunciation of the Declaration of Paris in order that this country may revert to the tactics which it pursued 100 years or more ago. They then proceed to assert that the articles of the Declaration of London governing conditional contraband are of such a nature that in time of war this country must inevitably be starved into surrender. Apparently these critics would like food and the other articles in the list of conditional contraband free when they are consigned to this country and absolute contraband when consigned to any other country—a delightful arrangement for us, no doubt, but one to which I am afraid no foreign power is likely to agree. But I wonder whether this class of critics have considered what is likely to be the result of our returning to the tactics of 100 years ago. I wonder whether they contemplate with anything like equanimity the prospect of this country being engaged in war with, perhaps, half the civilized world, be-

cause that might very probably be the result of our returning to the tactics we adopted 100 years ago. For my reply I go to the critics themselves, and I find that they tell me that we are not only incapable of effectually cutting off the supplies of the enemy, that we are not only incapable of waging war against half the civilized world, but that we are not even capable of defending our own supplies.

Let me illustrate those points by one or two short quotations from the pamphlet issued by the Imperial Maritime League, which has run through eight editions and for which it is claimed that it has been distributed throughout the entirety of the constituencies of the United Kingdom. I turn to page 13 to see what they have to say about the Declaration of Paris, and I find this:

But how do we expect to enforce our national will, how do we hope to win victory in war, unless we retain the means to injure our opponents? And now that we have abandoned—it is to be hoped temporarily only—the right of capturing enemy goods in neutral ships, the power of injuring seriously any great State with which we may come into conflict is practically gone.

Then, on page 17, this is what they have to say about our food supply:

By actually consenting to this inclusion of food amongst articles of contraband, our representatives at the London conference have put a weapon in the hands of our rivals which can not fail. If this astounding provision be ratified by the Government, they will have put the coffin lid on England and nailed it down.

Finally I would like to give a quotation from what they say in regard to our capacity for defending supplies:

The broad fact can not be denied that British shipping, all the world over, is at the mercy of its foes.

These are the people who want to denounce the Declaration of Paris. Again:

We have now seen, in all its appalling tenuity, the weakness of the force upon which, wrapped in ignorance as in a garment, the British public blindly rely for their salvation from the last sorrows of starvation in time of war.

There is a pretty medley, my lords! And that is the food with which the public mind has been fed very largely during the last few months. I think that those who so violently denounce this Declaration may be divided, roughly, into two classes. There are the jingoes, who apparently are prepared to challenge the rest of the world to come on, and there are the pessimists, who fear that we are no longer capable of defending our own supplies. I can not help thinking that between these two mutually destructive attitudes the Declaration of London may very likely approach somewhere near to the happy medium.

Then we are told that by this Declaration we have abandoned the doctrine of continuous voyage so far as conditional contraband is

concerned—I think the noble earl, Lord Desart, called it the doctrine of ultimate destination. Well, I am very glad we have abandoned it—it was absolutely useless as a weapon of offense—and I think it will very likely give us facilities for obtaining supplies through neutral ports. The noble lord, Lord Desborough, in the course of his speech the other evening, told us that we must not suppose that it would be possible to obtain supplies through a neutral port, because none of the ports of northern France, for instance, had any facilities for handling cargoes of grain. Well, who wants to handle cargoes of grain? All that it is necessary to do is to turn the ship round and send her across the Channel. Noble lords laugh, but I do not know of any objection to that. Other objectors say that grain is very frequently shipped in part cargoes, and that therefore it would be absolutely necessary to handle the cargoes and transship them on arrival at the neutral port. All I can say is that in time of war the grain must be shipped in full cargoes. It may be more expensive and more inconvenient, but then, unfortunately, war always is expensive and always is inconvenient. Then Lord Desborough went on to say that, even supposing it were possible to get supplies through a neutral port, they would be swept off the sea by the enemy before they could get across the Channel. If our fleet is not capable of protecting those supplies when they are coming across the Channel, our plight must indeed be a desperate one.

After all is said and done, does it not come to this—that either our fleet must be capable of guaranteeing supplies or we are lost? It is no use talking about feeding this country with supplies in neutral ships. It is a physical impossibility. Either our fleet must be capable of protecting our own shipping or we must surrender. I do not think I can do better, in leaving this branch of the subject, than by quoting an extract from *Sea Law and Sea Power*, by that protagonist in the agitation against this Declaration, Mr. Gibson Bowles:

Even if Great Britain be not so predominant—

i. e., in command of the sea—

even then, so wide and so open are the avenues of access to the British Islands, such supplies can not be intercepted to any appreciable extent were all the navies in the world to be set the task.

The question of the destruction of neutral prizes before adjudication is intimately bound up with that of contraband. And we are told that this country, under the Declaration, has abandoned the attitude which it has hitherto consistently maintained—that in no circumstances should a neutral vessel be destroyed before adjudication. This country has been almost singular in its attitude, and surely rather than allow the matter to remain in its present unsettled state it was better that our delegates should endeavor to persuade

the representatives of the foreign powers to agree to some compromise which approached as nearly as possible to what I may call our ideal. That they did succeed in doing that I think is shown by the fact that the delegates of the foreign powers protested that the restrictions under which in future the destruction of neutral prizes before adjudication is to be allowed were of such a nature that they amounted almost to a renunciation of the right. Let me remind the House of what the noble earl, Lord Desart, says in reference to this in his report [p. 98] :

The delegates representing those powers which have been most determined in vindicating the right to destroy neutral prizes declared that the combination of the rules now adopted respecting destruction and liability of the ship practically amounted in itself to a renunciation of the right in all but a few cases. We did not conceal the fact that this was exactly the object at which we aimed.¹

If the Declaration is not ratified, what is the position? Presumably the other powers will still maintain the right to destroy before adjudication. If we are belligerents we can not protest more strongly than by prosecuting the war in which we are already engaged. We can not hope for any support in our protests from the other neutrals, because they reserve to themselves the right of destruction before adjudication.

Well, then, what is the position if we are neutrals? I have heard it suggested in the course of this debate that in some hazy and unexplained way we could bring pressure to bear upon the belligerent. I do not quite know what particular kind of pressure it is. And here, again, it must be remembered that we can not expect support in bringing that pressure from any other neutral, every other neutral, with possibly one or two exceptions, reserving to themselves the right to destroy before adjudication. I can not think of any other remedy but the remedy of war, and that is the remedy which apparently some of the critics would wish us to employ. Let me put this to them. Supposing both belligerents destroyed some of our shipping, we being neutrals, are we to go to war with both of them? Supposing there are three belligerents and each one of the three destroys some of our shipping, are we to go to war with all three belligerents? I go to the critics themselves again for the reply. They tell me that, so far from our being able to carry on war against three other powers, the strength of our fleet falls far short of the two-power standard. Then we are told that the restrictions under which in future the destruction of neutral prizes would be allowed are so uncertain that the commander of a belligerent warship would undoubtedly give himself the benefit of the slightest doubt, and would

¹ British delegates at the Naval Conference to Sir Edward Grey, *British Parliamentary Paper*, Miscellaneous, No. 4, 1909 [Cd. 4554], p. 93; reprinted in Scott, *The Declaration of London*, February, 1909, p. 235.

destroy the ship in order to strike a blow at the enemy by stopping some of his supplies. Well, if he will do that in spite of the restrictions contained in the Declaration, what would he do if he was unfettered by any restrictions whatever?

The criticism of this Declaration has been so sweeping that apparently those who condemn it can not even see any value in the list of articles which can not be declared contraband. They tell us that they are of minor importance, and that, with possibly one or two exceptions, the list includes articles which no power would ever dream of declaring contraband. Apart from the fact that the goods named in that list account for an enormous proportion of the total foreign trade of this country; apart from the fact that the list includes one or two articles which have on previous occasions been declared contraband—apart from those facts the list also contains articles which I of my own knowledge know to be not only susceptible of use by belligerents, but essential for the conduct of warlike operations. I should have thought it would have been generally acknowledged that it was of great advantage to this country, both as belligerents and as neutrals. As belligerents I should have thought it was of advantage to know that in future there is no risk of our having to close down our factories for lack of raw materials; and as neutrals I should have thought it was a great advantage to this country, with our enormous interests, mercantile and shipping, to know that in future any article named in the list can be sent to any part of the world without let or hindrance, with the certain knowledge that it can not be declared contraband. I should have thought, too, that it would have been generally acknowledged that it was an advantage to have in future one uniform law instead of the present state of uncertainty; and further, I should have thought that it would have been generally admitted, after our recent experiences at The Hague, that we are not the only country in the world that is capable of dispensing justice. But, my lords, apparently the same fears that have allowed the critics of this Declaration to think that the delegates of the foreign powers at the recent conference entered into some dark conspiracy to rob this country of its most cherished rights, lead them to suppose now that the representatives of the other powers when they come to the international court will throw every other consideration to the winds, every consideration of honor, of justice, and fair play, in order that they may wreak their spite upon this country. I prefer to think that we are not, after all, so utterly detestable in the eyes of every other nation in the world.

LORD MUSKERRY. My lords, last Thursday my noble friend Lord Ellenborough made an admirable speech on this subject from the point of view of the naval officer. I wish to say a few words on behalf of the merchant service, and more especially on behalf of the

Imperial Merchant Service Guild, which comprises very nearly two-thirds of the certificated captains and officers in the merchant service. International lawyers may have a most perfect knowledge of international law and of other law, but they can not be considered as practical men in regard to seafaring matters. The men whom I represent are—no men more so—and on their behalf I protest against the ratification of the Declaration of London. They say that the Declaration of Paris was bad, but that this new Declaration will be worse as regards the interests of the merchant service.

I would remind your lordships that this country mainly owes its prosperity to the merchant service, and we owe to that service the building up of this great Empire. Therefore anything which will tend to deteriorate or do away with our merchant service should be severely condemned. If you do away with our merchant service you may then do away with the defending army and navy, for this country will have nothing left worth defending. On Thursday last the noble and learned Lord on the Woolsack maintained the carrying of food supplies in neutral ships. We do not want our food supplies carried in neutral ships as long as we can have our own ships. It is in our own ships, commanded and manned by British officers and seamen, that we should put our trust. The merchant service, if the Government do their duty and give it the support it deserves and needs, will always be amply sufficient to supply this country with food. In the old days the merchant service always did its duty, and if looked after now it will be ready to do so again in the same way.

In conclusion, I would like to draw your lordships' attention to a reply given by Mr. Asquith in another place on February 9. The right honorable gentleman was asked by Mr. Butler:¹

Will any opportunity be given to Parliament to express their view—yes or no—whether the Declaration should be ratified?

The Prime Minister replied:

The ratification is a matter not for Parliament but for the Crown. The Crown will not be advised to ratify if the House of Commons gives an adverse vote.

It seems to me that the question is whether, if the House of Commons gives it approval and your lordships disapprove, the Cabinet will consider that sufficient to advise the Crown to ratify the Declaration—in other words, is it the intention of the Government that in matters of this sort the House of Commons alone should constitute Parliament and that the opinion of this House should be completely ignored? I hope some noble lord opposite who will speak for His Majesty's Government will be able to give us definite information on this rather important subject.

¹ Cf. *supra*, p. 7.

The MARQUESS OF SALISBURY.¹ My lords, this is the third day on which your lordships have been engaged in discussing this most important subject. I do not think that the country will be surprised that so much time has been given to this Declaration. It indeed deals with matters which are of vital concern. I think that in the speech which my noble friend Lord Ritchie delivered this afternoon he did not give as much appreciation to the vital character of this Declaration as it deserves. I am not a pessimist and I am not a jingo, but really politicians, even Unionists, in this country are not entirely confined to those two classes. Some of us claim to be men who desire to study the vital interests of our country in moderate language and with a moderate policy.

LORD RITCHIE. I said that those who violently denounce this Declaration could be divided into those two classes. I am quite sure the noble marquess does not intend to violently denounce the Declaration.

The MARQUESS OF SALISBURY. My noble friend was, of course, addressing himself to the debate which has taken place in your lordships' House during these three days, and I have not heard a violent speech delivered on either side of the House. I desired, therefore, to call attention to the fact that the criticisms which we offer to the Declaration are not violent criticisms, but are criticisms which are important, we think, because of the vital character of the Declaration itself. A noble lord opposite, Lord Weardale, who spoke on the last occasion, drew a very gloomy picture of the results if the Crown were advised to refuse the ratification of this treaty. No doubt it is a strong measure to take. But when you come to consider that our country stands in a unique position in regard to this matter, and when you also add to that the great novelty of the procedure which the Declaration and convention are about to set up, then I think a refusal of the ratification would be abundantly justified.

My noble friend Lord Ritchie said that unless we were able to protect our own shipping we were certainly lost. We shall protect our own shipping, no doubt, a great deal of it; but we can not be ubiquitous. Powerful though we are at sea, we can not cover absolutely all the avenues of trade of this country. And let him remember also that when we come to discuss with other countries what ought to be done in matters of this kind we stand to lose far more than any other country. Every other country practically has a land frontier over which all the supplies they require can be brought. We alone have to bring our supplies across the sea. To us alone it

¹ Before he succeeded to his father's titles the Marquess of Salisbury sat in the House of Commons as a Conservative (1885-1903). He also held various public offices, including those of Under-Secretary for Foreign Affairs, Lord Privy Seal and President of the Board of Trade.

is a matter of life and death that the regulations which govern that commerce should not be unfavorable to this country either in peace or in war. I am sure the Government appreciate the importance of that consideration, but I think they have underrated the difficulty.

What are the Government trying to do? Their object is, if I may say so, admirable. They are pursuing a policy which has been adopted by both parties in the State—that is to say, they are endeavoring to establish, as far as possible, in lieu of the arbitrament of arms in international disputes, a reign of law. Both parties in the State have aided step by step to build up this edifice. But we have got very little way yet. And when you are establishing a code of international law which has to be interpreted judicially by a tribunal, is it not abundantly clear that you must be in the highest degree careful of the precise language you employ and the precise terms on which you agree? There is nothing precise at all in this Declaration. It is vague from beginning to end. The vital interests of our country are to be subject to a vague code which may or may not be interpreted in our favor. When I read the language of this Declaration I am reminded far more of the language of diplomacy than the language of an act of Parliament. The noble viscount (Viscount Morley) dissents. I was going to say an impertinent thing—namely, that the noble viscount does not know the language of diplomacy as well as some of us, but that would not be true. He knows that in the language of diplomacy the last thing people desire is to be precise.

VISCOUNT MORLEY OF BLACKBURN. Some people.

The MARQUESS OF SALISBURY. I do not know in what particular treaties the noble viscount has been engaged. All I can say is that nearly all the treaties in which I have been engaged abound in loopholes. The language is never precise. Nor does it matter in ordinary cases because the authority which is going to decide the meaning is the power itself. It is well known as an axiom of diplomacy that the power itself which signs the treaty decides its obligations under the treaty. Therefore vagueness does not matter. But in a code which is going to be interpreted by a tribunal it is quite another thing, and we require the language to be precise. Let me give an example. I am sorry the Lord Chancellor is not in his place. In his speech the other night the noble and learned lord said that one of the main objects to be obtained by this Declaration is certainty. There is no certainty, as far as I can make out, in any of the provisions of the Declaration. There is a word “commercant”—that is the French word used to describe the person to whom if foodstuffs are consigned in certain cases they may be destroyed. It is of vital importance, of course, who the “commercant” is. The Foreign Office have translated that as “contractor.” Everybody knows that

that is wrong. Yet this was the solemn translation which our Foreign Office put upon the word. What is the proper translation? The noble and learned lord, the Lord Chancellor, throwing over the Foreign Office, used the phrase "trader" when he described it. Why should there be such a doubt upon the matter? Of course, if it were a bill such as your lordships are accustomed to deal with there would be a definition clause, but the language used in this instrument is absolutely vague.

But a far worse criticism remains behind. The question is, Does or does not this Declaration contain within itself the sum total of our obligations? There is great doubt about it. There is the question whether or not the text of the Declaration is conclusive, or whether we have not got to look beyond the text of the Declaration to a certain report which is issued in the Blue Book along with it, and which appears to have some sort of authority—it is called the Renault report. I want your lordships to realize that the Renault report does not coincide with the text. I am not merely giving my own opinion, for I hold in my hand a most instructive account of a debate on this Declaration which took place at a conference of the International Law Society—apparently a very learned authority—in August last year.¹ Several speeches were made at that conference which well deserve your lordships' attention. Here is an extract from a speech by Sir John Macdonell, who, speaking of this report, said:

The commentary seems occasionally to extend or qualify if not to conflict with the text.

Your lordships will see that, if that is true, it is of vital importance to know what authority this commentary has. It is surprising to find that in the text itself there is no reference to the commentary. That attracted the attention of a noble lord opposite, Lord Reay, when he spoke on Thursday night. He said that it surprised him, and he thought there ought to have been some words in the text itself embodying the report; but there is nothing of the kind.

That being so, one must turn to other authorities, and I turn to the discussion at this conference to which I have referred. Mr. Arthur Cohen, a supporter of the Declaration, is evidently exceedingly doubtful whether the text is to prevail or the report. The same in the case of Sir John Macdonell, and the same in the case of Dr. Baker, who is honorable secretary of the International Law Society; and Sir Thomas Barclay, who also spoke, had no doubt that it was not to be considered as having authority. Here are some very weighty opinions. I want His Majesty's Government to tell me whether they

¹ The 26th Conference of the International Law Association. A complete account of the conference may be found in the *Report of the 26th Conference held at the Guildhall, London, August 2-5, 1910*. London, 1919.

are right or whether they are wrong. What have we heard in your lordships' House on the matter? We heard a speech the other night from what I may call the fountain head, a most learned speech—your lordships' House is the only assembly in the world which could have produced such a speech—the speech of an expert addressing himself to a subject of which he is master. I understood from Lord Desart that, in his opinion, this report had full authority to explain the text; and in order to reinforce his own opinion, which by itself would have weighed very greatly with your lordships, Lord Desart cited a certain French lawyer whom he was not able to name but who he assured us was of great eminence, and in that gentleman's opinion there was no question that this report had full authority.

The EARL OF DESART. What I said was that according to the practice of continental courts I felt sure it would be accepted as an authoritative commentary and be of conventional force, but in English and American courts such a document might not be accepted as authoritative.

The MARQUESS OF SALISBURY. It would be of almost conventional force?

The EARL OF DESART. In continental countries.

The MARQUESS OF SALISBURY. The noble earl has given it as his opinion and the opinion of the eminent man he cited that M. Renault's report was almost of conventional force—that is to say, it has almost the same force as the convention itself. The noble viscount is surprised.

VISCOUNT MORLEY OF BLACKBURN. I shall say something by and by.

The MARQUESS OF SALISBURY. That is the opinion of Lord Desart. What is the opinion of His Majesty's Government? We had an opinion of some sort given us by the Lord Chancellor. I should have preferred to say these things in the noble and learned lord's presence, but as he is not here I hope he will forgive me. I think all your lordships who were present when the noble and learned lord spoke must have realized that, when this report was mentioned to the noble and learned lord in an interruption by my noble friend Lord Desborough, the Lord Chancellor showed some surprise. He was evidently taken aback for the moment, if I may say so of so excellent a controversialist. All the resources at the noble and learned lord's command were at once put in motion, and documents of all sorts and sizes were presently produced on the Woolsack. It was a very astonishing thing that this report which is almost of conventional force came as a matter of some surprise to the principal legal member of His Majesty's Government. The noble and learned lord, having refreshed his memory upon it—of course, he must have been to some extent familiar with the document—was afterwards challenged by my noble and learned friend Lord Halsbury, and then the Lord Chancellor

said that it was an official commentary which would be regarded by any court. That was very carefully chosen language. I have no doubt it would be "regarded." But in what respect would it be regarded? Would it be regarded as authoritative, as binding? Really I am not asking too much when I ask that, before this country is committed by His Majesty's Government to a convention which touches its most vital interests, your lordships and the country, and perhaps I may say the Government themselves, should realize exactly to what the country is being bound.

I have a further reason for thinking that there is some doubt in the minds of His Majesty's Government. Among the many ambiguities in the text of the document is the meaning of the word "enemy." In the document itself it is said that where foodstuffs are destined for the use of the enemy they may be treated as contraband. So far as the text of the document is concerned "enemy" appears to include the whole population of the country which is at war, but the report seems to limit the meaning of the word to "the armed forces of the enemy." The question is, which of these two views is to prevail? If the report is absolutely authentic and authoritative, it is not necessary to say any more. The expression in the report is limited to "armed forces," and the Government might leave it there. But that is not so; for, as the noble and learned lord reminded us, the Secretary of State for Foreign Affairs has promised in ratifying the convention to issue a special note stating exactly what "enemy" does mean in our opinion—namely, the armed forces of the country, and not the people as a whole. If it is necessary for the Foreign Secretary to explain in a special note what "enemy" means, then it is clear that the authority of M. Renault's report is not complete; otherwise it would not be necessary to make any explanation at all. Further than that, this concession by the Foreign Secretary is of the greatest importance, for if it be necessary to explain one of the words in regard to which there is a difference between the text and the report, it obviously follows that all the ambiguities ought to be explained, and if they are not explained the court must take notice of the fact that only one point on which there has been a difference has been dealt with by a special note.

The inevitable conclusion I come to is that the Government have not made up their minds what is the authority of M. Renault's report—whether it is to have conventional force, as the noble earl, Lord Desart, told us just now, or whether it is merely, in the Lord Chancellor's words—and I am glad the noble and learned lord is now in his place—to be regarded by the court, though in what respect it was to be regarded he was not good enough to tell us. This is not a mere theoretical point. I want to call your lordships' attention in a very few words to the additions which the report involves beyond the text

of the convention. In the first place, there is the question as to whether this international court is to have the power of making law. That is a matter which was put to the Lord Chancellor on Thursday. The report, so I understand—I take it from my noble friend—says that this international court will have the power of making law. The Lord Chancellor when challenged on that point was very much shocked, and I am not surprised, considering his great position and judicial training, that he should have been shocked, at the suggestion that this court should absolutely have authority to make law. But, my lords, if the report is to be believed, if it is of conventional force, then, although the Lord Chancellor is shocked, the fact remains.

Then we turn to article 35. There your lordships will see that in determining the destination of a ship the ship's papers are to be treated as conclusive, with a certain limited exception. How does the report deal with this? These are the remarkable words of the report:

It must not be too literally interpreted, for that would make all frauds easy.

How is a court going to interpret this very precise provision if M. Renault's authoritative report says that this particular provision must not be taken too literally, for otherwise frauds would be easy? Is that the kind of code of law, is that the kind of precision, the kind of certainty, of which the noble and learned lord is so proud? When you come to look into this convention will it not be found that these provisions are not precise, that they are not certain, and that they are not such as the noble and learned lord himself would pass in a bill submitted to your lordships' House?

I next come to the word "base." The noble and learned lord will remember that this point was raised during the discussion on Thursday. The term used in the text of the convention is "a base for the armed forces of the enemy." The importance of the matter is this, that where foodstuffs are being taken to a base for the armed forces of the enemy they may be treated as contraband. The text says "a base for the armed forces of the enemy," but the report goes much further than that. The report explains this word "base" to include base for supply. It is quite specific and quite clear. The noble and learned lord was faced with that difficulty. He was told by my noble friend Lord Desborough that there was this distinction, but he did not attempt to explain the ambiguity or the divergence, and the fact remains that with regard to this vital matter—namely, the ports which will be open for the supply of corn and foodstuffs to this country in its last extremity—the Government do not know what they are committing themselves to. I quote against the noble and learned lord and noble earl, Lord Desart, his plenipotentiary. The noble earl says the report is almost of conventional force. The noble and learned lord referred to the report and apparently treated it as of

very little value; and the difference between the two texts in a matter of this kind, which is a matter of life and death to our country, is to remain in this vague state when the ratification of His Majesty is granted to the convention.

I turn for a moment from the uncertainty of this report to some of the effects of its provisions. Through this fog of uncertainty we seem to discern the sinister outline of future disaster to our country. The first criticism which I venture to make of the terms of this report is that they differ essentially from the terms which His Majesty's Government desired should be agreed to by the powers. If your lordships will study the instructions which Sir Edward Grey gave to the plenipotentiaries you will find that they differ in most vital respects from the terms which were ultimately agreed upon. Sir Edward Grey was not for conceding that there should be this vagueness as to where foodstuffs might be consigned in time of war. On the contrary he laid it down in express terms that foodstuffs should not be treated as contraband unless they were destined to a beleaguered fortress, and in other respects he was equally precise. He said that the sinking of neutral prizes could in no case be admitted as possible or allowed. In both these respects the convention differs from the views put forward by the Secretary of State. That is my first criticism. My second criticism is that the very nature of this convention involves this consequence, that however harshly an enemy might interpret the terms of the convention all redress is postponed till after the war is concluded. That was the principal argument put forward by my noble friend Lord Selborne in his speech the other night, and the Lord Chancellor, who followed him on that occasion—it is a remarkable fact—never touched the point at all.

The LORD CHANCELLOR. I did not agree with him.

The MARQUESS OF SALISBURY. The noble and learned lord did not agree with him, I am sure, but in his speech he did not deal with the point. That was a very remarkable omission and a very remarkable circumstance, because it was much the strongest point in my noble friend's speech. Now, what is the effect of this postponement taken in connection with the ambiguities to which I have already drawn your lordships' attention? What will inevitably be the attitude of the foreign power, or rather of the commanding officer of the enemy's ship? He will say, if there is a shadow of doubt as to the applicability of the clauses of the convention, "Let us treat the foodstuffs as contraband; let us sink the neutral ship. The matter, no doubt, will have to be decided hereafter, but that will be after the war is over. It is a matter of quite secondary importance how it is decided then; it may be that I shall turn out to be wrong, but if we are victorious in the war I am quite certain that will not be held to my dis-

advantage." It is very probable that in future wars, after this convention becomes international law, one of the ordinary conditions of peace will be that the beaten party pays all the fines which the international court will impose; and, therefore, this commanding officer's action, unless, of course, defeat ensued, would not matter to him or to his country. If England were defeated she would have to pay the costs of the very outrage which had so much assisted towards her defeat. The Lord Chancellor himself was quite aware of this point. He applied it, of course, to England, and he thought it was rather in favor of the convention. He said that if, in the course of our operations as belligerents we were challenged as to the right of doing any of these things in the convention, we should have an opportunity of saying that we preferred to go before the international court. Exactly, but so will our enemies have the opportunity of saying that, and the result is that all redress will be postponed until afterwards.

My lords, just think what this will mean. I am not so confident of the power of my country as is my noble friend Lord Ritchie. Powerful as we are, and magnificent as our fleet undoubtedly is, any one who looks round on Europe to-day must see that the contest on which we may be engaged with powers growing in strength every day in respect of their fleets would be of the most arduous kind, and although I do not doubt that we should fight our hardest we are not entitled to take any chances. We have to protect the whole of our immense seaboard, and unless we can protect it, according to my noble friend Lord Ritchie, the country must starve. My noble friend Lord Selborne put this point to your lordships, but as the noble and learned lord has not dealt with it the House will forgive me for shortly putting it again. As matters stand without the convention, if there was an attempt on the part of an enemy to capture or destroy as contraband all ships carrying foodstuffs to our ports, there would be an uprising on the part of neutral powers at once. It is absurd to think that the neutral powers would allow an enemy to do what he liked with neutral shipping as matters stand at present, even if our enemy was so disposed. As a matter of fact a belligerent would be effectively controlled by the public opinion of the neutral powers. The noble and learned lord alluded on Thursday to a certain amount of friction between us and Germany at the time of the South African War. That is perfectly true, but the noble and learned lord knows quite well that the protests of the German Government had immense weight with the British Government at that moment. The protest of the neutral power that we were interpreting international law harshly—I am not going into the merits of the case—was most effective, and had to be taken account of.

If this convention is not passed do you mean to tell us that if a belligerent interpreted his powers harshly and treated as contraband

of war the cargoes of all neutral ships carrying foodstuffs, wherever they were destined among the ports of our country, that would be submitted to by neutral powers? I am certain it would not; and the certainty that it would not be submitted to would be an effectual check on the belligerent. But if this convention passes the neutral power itself would be a signatory to it and would be bound by it; and what would happen would be this, that when an enemy began destroying or capturing ships carrying foodstuffs to our country on the ground that they were going to bases of supply, the enemy would reply to a protest by saying, "It is all right. You can go to the tribunal after the war is over and get compensation. You must not take the law into your own hands and say that you can determine what a 'base of supply' is; that is a matter for the tribunal hereafter." And so they would merrily go on capturing ships carrying foodstuffs, not caring a jot or a tittle what happened before the tribunal afterwards, because if they were victorious they would not have to pay compensation. My lords, that is a point which the noble and learned lord did not touch upon in his speech, and it is a point which we would ask the noble viscount to address himself to. We ask him to tell us how the Government defend this ambiguity in the light of the difference which it creates, and why redress should not be available at the moment instead of being postponed until the end of the war.

I do not intend to detain your lordships any longer this evening. I have done my best to summarise the arguments which have emerged from our side of the House during this three days' discussion, and I want to conclude, if I may, by an appeal to His Majesty's Government. I do not think it is a matter of surprise that the convention containing as it does all these ambiguities and provisions full of menace to the future, has been received with great disfavour by some of our large dominions over the seas. I do not know it on my own authority, but I have heard it stated in the course of the debate, and I believe it is so, that that is certainly the case with regard to one of our great dominions, and I understand that before the ratifications are exchanged His Majesty's Government are willing that the matter should be discussed. I am glad to hear that. But it is not only our overseas dominions who are protesting against this convention. The chambers of commerce in this country are also protesting against it. I do not think the Government will say that the opinions of the chambers of commerce are to be despised. Why should they be despised? They are vitally interested. These are matters to which their attention is being continually drawn and matters which would mean a great profit or a great loss to them hereafter. The chambers of commerce have nearly all discussed this point, and 30 of them, including the central chamber of commerce, have

passed a resolution adverse to the convention. Then take the chambers of shipping. I do not think that any member of the Government will say that they are to be despised. Out of 10 chambers of shipping all except one have passed hostile resolutions, and I believe that that single one, which was quoted the other night, is beginning to reconsider its favourable view of the convention.

Now, my lords, in the face of this adverse opinion, what is it we ask the Government? We do not approach them in a hostile spirit. We do not say to the Government, "Tear up your convention," but we do say, "Before you take this perfectly irretraceable step, of committing this country without the possibility of going back for 12 years, will you have an inquiry into the precise meaning and the exact effect of the provisions to which you propose to commit us?" That is, may I say, a most reasonable request, and I earnestly hope that His Majesty's Government will either grant the request, or will, at any rate, not shut the door to the possibility. My authority is, of course, of no value; but after listening to the debate I have ventured to put before your lordships some reasons for thinking that the Government really have not appreciated what the effect of the convention is, that they do not quite know its meaning, and that they have not reflected upon the dangers which it conceals. In those circumstances I earnestly hope, if they do not consent to my noble friend's motion to-night, that they will at any rate keep an open mind on this point, and before the ratification is finally exchanged submit this convention to a careful inquiry by a body competent to deal with it.

The LORD PRESIDENT OF THE COUNCIL (Viscount Morley of Blackburn). My lords, I need not say that I strongly concur with the noble marquess in his view of the vital importance of the subject your lordships are now discussing. I think it was my noble friend Lord Desborough who said the other night that its consequences are far-reaching—much beyond the consequences of many other topics of the day which excite much more passion and much more general and more lively interest. The House may congratulate itself, as the noble marquess has implied, upon these three days of discussion. It has been my fortune to listen to many thousands of debates, but I have never listened to a debate in which the temper—if I may say so without presumption—was more serious, from which party spirit was more excluded, and in which the gravity of the arguments and the full statements of the various views were more excellently sustained and established.

The noble lord, Lord Ritchie, who resumed the debate to-day, said that what astonished him was the ignorance of many persons outside as to the important points which are being raised in this Declaration. I am quite aware of the prevalence of that ignorance and that laxity

of language and of mind. But then I am lenient, and the case, after all, is a very complex one. I believe my noble friend Lord Desart himself will agree that you do not pick up all the threads of this enormous web without a really serious and rather troublesome exercise of mind. Why is it complex? It is complex because it concerns our rights as a belligerent, it concerns our rights as a neutral, it concerns the rights of other powers both as belligerents and as neutrals, and you have to be constantly studying the papers and the proposals in the Declaration now under discussion, to be constantly changing your angles of vision and putting yourself in different places and taking up new points of view. The noble marquess said he was afraid perhaps I might bring to this discussion the spirit of the diplomatist rather than that of the lawyer, and then he said that, possibly, I was not so practised a diplomatist as some other persons.

THE MARQUESS OF SALISBURY. I withdrew that. I did not mean to be in the least uncivil to my noble friend.

VISCOUNT MORLEY OF BLACKBURN. I am quite sure of that. We ought not to look at this Declaration merely as diplomatists; still less merely as lawyers, not even entirely from the point of view of Lord Muskerry, who said this Declaration was going to do away with the merchant shipping service of this country. It filled me with horror when I heard his words. If that were so, I should not get up in this House and defend the Declaration. I think that is a delusion on Lord Muskerry's part. The Declaration, of course, is more or less in the nature of a diplomatic transaction; it is a set of international arrangements, as I shall show a little later on.

Perhaps I had better deal at once with the points which the noble marquess has put, and first I will deal with the simplest. I am diplomatic enough for that. He quarrels with the Declaration because the word "enemy" is a too vague word. Does it mean enemy Government, or does it mean enemy population, or what does it mean? Report or no report, it is perfectly clear that, looking at article 34 and reading it—as it must be read—in conjunction with article 33, the expression "enemy" can only mean enemy Government. At all events, that is the intention with which it figures in the Declaration. Then he complained that it was too vague and not precise enough. There, again, we are not construing an act of Parliament; we are not really construing or deliberating upon a code, properly so called. It is a code which must be capable, from the nature of the subject-matter concerned in it, of more or less elasticity and adaptation, not in principle but in application.

Now with regard to the report, which the noble marquess dwelt upon at great length, as many other critics of the Declaration have done, he seemed to suppose that no language is to be found in any of the books or any of the papers bearing upon the point, concerning

the relations of the report to the articles in the Declaration. There is a very important passage which has been brought to my notice in the report itself. It is on page 35 of the Blue Book on the conference in London. What does it say? It reads:

We now reach the explanation of the Declaration itself, on which we shall try, by summarising the reports already approved by the conference, to give an exact and uncontroversial commentary; this, when it has become an official commentary by receiving the approval of the conference, may serve as a guide to the different authorities—administrative, military, and judicial—who may be called upon to apply it.

It is an error to speak of this as M. Renault's report; it is the report of the conference, which received the approval of all the powers represented.

THE MARQUESS OF SALISBURY. The Government are called upon to ratify the convention. The question is whether they are going to ratify the report as well as the convention. If it is only the convention, there is nothing in the convention embodying the report. What the noble viscount has read out is a phrase in the report which talks of the convention. It would be much more to the point if he read out a phrase in the convention which referred to the report.

VISCOUNT MORLEY OF BLACKBURN. I would like to read some words quoted the other night by my noble friend Lord Desart. This is language as to the report by a high, competent, and first-hand authority. He says:

It was not made to satisfy the friendly curiosity of international lawyers, but to serve as a guide for the administrative, military, and judicial authorities who might have to apply its provisions. It was the work of the whole conference, and has nothing in common with the preamble going before an ordinary law to which the courts may apply the interpretation that they think right.

The intention, as we believe, of the signatories to the convention was to adopt it as an approved commentary. I can not carry it beyond that point. I think the report is placed there as an approved commentary; and it is quite true, if the noble and learned lord opposite insists on our regarding the Declaration as if it were an act of Parliament to be applied by an international court, that in applying the principles and details of this Declaration the international court, if they are puzzled at anything in it, will look at this explanatory commentary.

THE EARL OF HALSBURY. Does the noble viscount mean by an approved report or an approved commentary a commentary approved by the signatories?

VISCOUNT MORLEY OF BLACKBURN. I understand so. Whilst the noble marquess calls in question the authority of the report on the Declaration, my noble friend Lord Desborough has criticised the prize court convention on the strength of a passage in the report of

the second peace conference of 1907 on that convention. The passage occurs in that part of the report which commented upon article 7. In virtue of that article the international court is, in the absence of conventional stipulations binding upon the parties and of generally recognized principles of international law, to give judgment in accordance with the general principles of justice and equity. It is to such a judgment that the report refers when it says that the court will be called upon to "make the law." No occasion for thus "making of the law" can, therefore, arise except in cases not governed by any generally recognised rule of international law. When the prize court convention was signed in 1907 and the report on it made, there was a wide field of prize law in which the practice of nations was so divergent that no rules could be said to be generally accepted. It was for this reason that His Majesty's Government refused to accept the prize court convention unless and until definite rules concerning the law of prize had been agreed upon. This has been effectively done by the Declaration, and the ratification of the Declaration will have the effect of practically eliminating, except in some few instances, all those cases in which, otherwise, the international prize court would have been called upon, in the words of the report, to "make the law." I turn to another point. The noble marquess pointed out, as many critics outside have done, the difference between the instructions given to the British delegates by Sir Edward Grey when he appointed them and what was afterwards acceded to. Let us look and see what were the instructions. The Foreign Office often gives instructions to ambassadors and delegates; and if you are carrying on complex negotiations you do not say to your ambassador, "What we want is so and so; unless you get that we will take nothing." Sir Edward Grey in his instructions neither said it, nor could he have intended it, and to argue, as the noble marquess does, that because we could not get all that we sought, therefore we ought not to take what we could get, is surely very defective logic. The noble marquess, taking up a point raised the other night by the noble earl, Lord Dunraven, used language which, accustomed as I have been to revolutionary language in this House during the last year or two, surprised me. It is admitted that hitherto the law and practice of the Constitution has been that the treaty-making power rests with the Crown. That is not denied by anyone. The language used by Lord Dunraven was a little more definite than that of the noble marquess, but in either case are you not committing yourselves to a somewhat dangerous doctrine? I will explain what I mean by dangerous. There is a great State in which the treaty-making power is divided between the executive and the legislature, but I am not sure that those who have to deal with that great and most friendly community always find that an advantage, and I think you will be introducing

a very dangerous principle or maxim into our own Constitution if you impair the treaty-making right now vested in and practised by the Crown.

THE MARQUESS OF SALISBURY. I said nothing to challenge that.

VISCOUNT MORLEY OF BLACKBURN. I only throw that out as a caveat, which you may take at its own value. I should like to deal, quite rapidly, with some of the points that have been raised in this most instructive debate before I come to what I believe is the real thing that remains and deserves serious consideration—that is, the royal commission. I will postpone that for the present, if I may, although I regard that which the noble marquis wound up by pressing upon us as worthy of very serious consideration. My noble friend Lord Desborough, speaking about the free list in the Declaration, said:

There is nothing particular in the free list—only cotton.

My lords, I happen to come from the cotton county of Lancashire, and if the noble lord were to go there and say that the free list was not worth anything because only cotton was added to it, he would be enormously surprised at the outcry he created.

LORD DESBOROUGH. I did not say it was not worth anything. I said that only two new articles—cotton and hemp—had been declared noncontraband. I did not deny that they are important, but I said that all the others had been declared noncontraband before; and I would remind the noble viscount that two of the most interested chambers of commerce in Lancashire have passed a resolution against the Declaration.

VISCOUNT MORLEY OF BLACKBURN. If the noble lord will go and feel the pulse of Lancashire he will learn whether the people of that county think the omission or inclusion of cotton is a thing which is of no importance. Then it is urged that the enemy may not observe these new rules. They may not, but what reason is there to suppose that they would observe the old rules? Then Lord Desborough asked whether the Declaration would be binding on Great Britain whether the prize court was ratified or not. It would be possible to erect and constitute that court even though you reject the Declaration, but in the opinion of His Majesty's Government as at present advised it would be an extremely inexpedient step; it would be far more expedient to combine the Declaration with the constitution of the court as proposed.

LORD DESBOROUGH. That was not the object of my question. What I wanted to know was, supposing the international prize court, which has to go through both Houses of Parliament, is not set up, will these new rules of war be binding on all our national prize courts?

VISCOUNT MORLEY OF BLACKBURN. That requires very careful consideration, and before I could say that it would be absolutely binding

it would be necessary to know what were the executive directions. Certainly no one will deny that if you reject the Declaration this year we shall have taken up a position with regard to some of the points concerned which would make it very difficult for our prize courts to go against it. That is my own opinion.

LORD ASHBOURNE.¹ If the act of Parliament does not pass does the Declaration fall to the ground?

VISCOUNT MORLEY OF BLACKBURN. I do not know. The noble lord knows that all these strictly legal questions require a careful way of answering, which would not be satisfied in this case by my saying offhand whether it would or not. It is a perfectly right question, but it has no bearing on the point as to whether we should or should not ratify the convention. I am dealing now with the detailed and incidental points that struck me during the progress of the debate. They all, I think, made an impression on the House, and they deserve to be briefly dealt with.

Lord Selborne blamed Mr. McKinnon Wood, the Under-Secretary of State, because he said that the refusal of this ratification would give a new stimulus to the competition in naval armaments. Lord Selborne said that he did not believe that it would cause the navy estimates in any country to go up or down by a single sovereign. How would the rejection of the Declaration be regarded? Continental powers would see the greatest naval power in the world declining to be bound by rules of naval warfare that were not her own. That would be how they would interpret it. If that be so, I am sure that Lord Selborne will see how our action would be regarded by such bodies as navy leagues in the great countries of the Continent of Europe, who would demand an increase in their navies— increase upon increase. I am sure that we should, if we found any other power taking a similar part, demand an increase of the navy to protect our commerce against the arbitrary construction of rules of naval warfare by a power of overweening strength and pretensions.

There is the point that has been made in the popular and press discussions that the scheme of an international prize court was made in Germany. That is the allegation. What are the facts? The German plans were presented independently and simultaneously with our own. The proposals were not identical, as a matter of fact. We proposed an international court and took an active part in preparing the convention. Our Government, of course, closely watched the progress of the deliberations of the conference. Germany, France, Japan, Italy, Austria, the United States, and most of the other States were all, so I am informed on the best authority, as active as we were in the discussions. Germany was not more active

¹ Conservative.

or more prominent than other powers, especially such powers as France and the United States. The same is true of the deliberations of the naval conference which negotiated the Declaration of London. Is it not rather ludicrous, my lords, to talk of "attempts on the part of Germany and the weaker naval powers to alter the laws of war to the detriment of Great Britain?" That, to the best of my knowledge and belief, is a pure fiction.

The noble lord, Lord Weardale, mentioned the other night a certain poster apropos to the right of destruction. It is a picture, I understand, of a British vessel being sunk by an enemy's warship. I am the last person to be over-fastidious about posters. The honors with regard to posters are, I think, about equally divided between the two sides of the House. But let us look at this poster. What does it really mean? It can only mean two things—that but for the Declaration neutral ships would never be destroyed, and, secondly, that it is the Declaration that confers the unlimited right to destroy. I have seen some perverse posters in my life, but I can not imagine a more perverse poster than that one. As if a neutral ship could not be sunk now according to any rules laid down by the commanders of the nation that claims that right. I submit this to the most doubting critic that the Declaration has to encounter, that the checks on destruction are stronger under the Declaration than they would be without it.

The noble marquess spoke on the subject of bases, and this requires a little more lengthened treatment. When the purpose of article 34 is borne in mind, and when it is remembered that the object of it is only to meet cases in which it will rest on the owner of the goods to prove the innocence of the consignment, the authorities do not think it is at all likely that a prize court would hold a commercial port, such as abound on our coasts, like Southampton and Bristol, to be a base. It would be entirely a question of fact. The words of the Declaration are, "a port serving as a base"; that is to say, a port at the time serving as a base.

The EARL OF HALSBURY. Of supply.

VISCOUNT MORLEY OF BLACKBURN. Quite true.

The MARQUESS OF SALISBURY. The noble viscount accepts, then, that the terms of what we have inaccurately called M. Renault's report apply not only to a base of armament but to a base of supply.

VISCOUNT MORLEY OF BLACKBURN. Certainly.

The MARQUESS OF SALISBURY. The distinction is a very important one.

VISCOUNT MORLEY OF BLACKBURN. I quite agree. What does a base of supply mean? Take a naval base—a port that contains, gathers together, and allows egress for supplies for an enemy's ships.

A vessel coming out of such a port habitually, constantly, and systematically would no doubt constitute that port a base of supply. It has been argued, I observe, in some places that the possibility of a cargo coming to Southampton or to Bristol, and the provisions eventually reaching Aldershot, would constitute Southampton a base of supply, and the argument is that as that might apply to every other port in the country it would deprive us of access through these ports to foodstuffs and cargoes of that kind.

Take the case at its highest. Assume that every port in the United Kingdom would be held to be a base, and, therefore, that every neutral ship with food supplies would be a justifiable capture, because food supplies could be presumed to be contraband until their innocence was established. Even then, as was pointed out the other night, I think by Lord Desart, the importance of that question has been exaggerated, because of the sea-borne food supplies of the United Kingdom 90 per cent are carried in British ships and only 10 per cent in neutral ships. The 90 per cent in British ships could only be safeguarded by the action of the navy, that is, by harrying and hunting down the enemy cruisers, and the steps taken to protect British ships would equally keep the seas open for neutral ships bearing food supplies, and there is no reason to assume any high proportion of captures of neutral ships, or that neutral ships so captured would have a material effect on the food supplies of this country. If the Declaration were not ratified, the position of neutral ships in this respect would not be better, but worse. The noble and learned earl opposite said something about proof the other night. In this matter the present practice is that the onus of proof is always on the owners of the goods, and the judgment of the Russian Supreme Prize Court, in the case of the ship which has been referred to in this debate, during the Russo-Japanese War, and dealing with the parcels of foodstuffs in the cargo, was that in all such cases, according to the practice of prize courts for many centuries: the onus of proof would undoubtedly lie with the individual seeking recognition of an irregular destination and the release of vessels and cargoes arrested on suspicion.

Really, the important consideration in this matter of base of supply on our own coasts is that it must be serving at the time as a base of supply and must be connected with military or naval operations.

Now, my lords, I go to the proposal which is really the proposal before the House—namely, a royal commission. As to that, I would make this general remark. The objections—the point, I think, was made by Lord Reay the other night—urged against the Declaration are really objections directed against the whole policy of entering upon any negotiations with other powers for the settlement of ques-

tions relating to international law. That is what I feel, and I feel it particularly when you speak in favour of this royal commission. There can not be a more fascinating and attractive vision in the world than a body of impartial and competent gentlemen sitting as a royal commission to decide these matters, but the charming dream is dissipated when you look at the facts under which this Declaration comes before the country and before your lordships' House.

There was first the conference at The Hague. Many things were left open at The Hague. We then invited a second conference to be held in London expressly to deal with these questions. The whole set of questions was carefully considered by the body so constituted, the London conference, which contained, I would remind your lordships, representatives of the Admiralty, of the Foreign Office, as also the secretary of the Committee of Imperial Defence. What does this motion which is now on the table of your lordships' House mean in plain English? I will venture to tell your lordships the interpretation which will be put upon it by the persons concerned. What does it make us say to the powers whose representatives we invited to assemble and who did assemble here? This is what I think it makes us say: "We invited you to come here. We asked you to thresh out in detail the matters left open at The Hague. We admire the care, the diligence, the acuteness with which you conducted your deliberations. We recognize the sincerity with which you sought to find common ground for adjusting the questions outstanding amid conflicting interests. But, gentlemen, we have so little confidence in the results of your wisdom and your toil that we propose to throw the result overboard and to set up a new body of our own to find new answers to exhausted questions." That is the view which the powers who were parties to that conference will take, and I would respectfully suggest to noble lords sitting on that bench [the front opposition bench] that the day may come, some time or another, when you may have to deal in somewhat difficult circumstances with foreign powers, and I shall be very much surprised if, in the case of their protesting against any line or any action of yours, they do not show their want of confidence in your capacity for doing business. I shall be very much surprised if the Declaration of London has not by that time become rather a by-word, and if they do not remind you of that transaction. Your lordships may think that the Declaration is in need of, and the Declaration is open to, amendment. Does anybody suppose that this amendment would be easier to attain if, after inviting all these powers to confer and discuss, you flung away the result? Will it make it easier on future occasions? Does anybody suppose that the rejection of this Declaration now, or the postponement of it until you have overhauled the deliberations of this extremely diligent, competent, and conscientious body, will not cause

discouragement, disappointment, yes, and irritation, among the nations of the world? Human nature being what it is, I am sure it must.

I will not discuss to-night any question of increased armaments, but this I will venture to say. Is the fact that you recognize, that we recognize, the policy of the necessity of strong armaments any reason why you should not accompany this strengthening of your armaments by taking along with it a policy which seeks to settle international disputes by international courts and international agreements? On the contrary, so far from it being a reason why you should not do that, it is another, it is the best reason for doing it, and if by rejecting this Declaration you show yourselves unwilling to accompany increased armaments with this, it will be the despair of civilization. It is impossible to deny, even those who most of all object to this Declaration will not deny, the gain to the world of anything that draws the great States of the world to enter upon and follow up a course leading to collective agreement and concert, where, formerly, there was disclosed nothing but disagreement and confusion. The peace conference of 1899 and that of 1907 laid the foundation, if they did no more, of an agreement on principles of international law, which before were vague and doubtful and left neutrals to the arbitrary decisions of prize courts. Those were instruments which laid the foundations for a better state of things.

Nobody believes that moral influence alone will save or enable a great and powerful State to do its work unless the rulers of that State, to use a cumbrous phrase, "keep their powder dry." Nobody has argued for this Declaration upon any other principle. On the contrary, no Englishman would argue for the Declaration, or for the ratification of the Declaration, if he did not take for granted in every page and every line of that Declaration the doctrine and the policy of the supremacy of Great Britain at sea. This is no empty sentimentalism. But, though nobody in his senses believes that moral influence alone will save a State and retain its power, I am sure that nobody in his senses, nobody who has read history, who is familiar with modern diplomacy and the currents of that diplomacy, and realizes the spirit which is slowly forcing its way through democracy both in Europe and elsewhere—no one who thinks of this will deny that moral influence in itself is a valid, practical, and substantial asset which a nation ought to be proud to possess and which it would be madness to throw overboard.

LORD ALVERSTONE.¹ My lords, I had no intention of speaking in this

¹ Sir Richard Webster, Baron Alverstone, had been one of the foremost members of the legal profession for many years. Soon after his election to the House of Commons as a Conservative member for the Isle of Wight, in 1885, he became Attorney General, and he held that office almost continuously until 1900, when he was made Lord Chief Justice of England. He did some able work as Sir Charles Russell's junior in the Behring Sea Arbitration, 1893, was the advocate for Great Britain in the Venezuela dispute, and presided over the Alaska Boundary Arbitration Tribunal, 1903.

debate at all, but, having listened to practically the whole of it, I wish to make one or two observations on certain points that have been raised, not of a controversial character, and to respectfully ask your lordships' House to press for further consideration of this Declaration. I do not ask, and I do not wish to be thought to ask, for any special mode—it may be by reservation should this Declaration be ratified, or it may be by further consideration before it is ratified; but there are points which have come out in this debate which I respectfully urge do require further consideration.

The noble viscount said a moment ago that the policy which is opposed to this Declaration was a policy which objected to entering upon negotiations for the settlement of questions of international law. I will be no party to such a policy. I welcome all attempts among civilised nations for settling questions of international law, and I can give very practical reasons for so saying. I hope I may be allowed to refer to my own experience. I have had the privilege of appearing twice for my country in great international arbitrations, and I say most emphatically that I would far sooner go before an international tribunal to argue whether a treaty or convention had been broken or observed than I would go to argue whether a principle of international law had been observed or broken. I can endorse what has been said in the course of this debate, that if you are dealing with a convention or a treaty you stand to a certain extent upon some solid foundation, whereas if you are arguing a principle of international law your foundations are very sandy, if I may use the expression, because there is always the greatest controversy as to what the principles of international law are, having regard to the different views entertained by different nations.

I am, therefore, most anxious to do everything in my power to promote the coming to agreement between civilised nations upon such questions, but there are one or two points that have been raised in this debate, not of a controversial character, which I think are so strong and so important that they do require further consideration and reservation. I will deal with one which was referred to a few moments ago by the noble viscount, and that is what has been called the Renault report. The noble viscount read from the opinion of some no doubt great authority—I do not know who it was, but an anonymous authority—as my noble friend, if I may so call him, Lord Desart, did, that the report will be regarded as having conventional weight. If that is to be so, if we are going to invite that position, let us make the report a part of the convention. Let it be agreed one way or the other whether it should or should not be so regarded; and above all things, let the differences between the language of the report and the language of the Declaration be solved by one or the other being adopted. I am not speaking without my book on this

matter. I have had to deal with this specific question. I have had to address international tribunals upon it. I had the assistance of my noble and learned friend in one of the longest arbitrations on the subject, and I was junior to the late Lord Chief Justice in the first great one. We had to deal with this particular question as to what weight was to be given to contemporaneous documents which passed between nations at the same time as a treaty or convention, and it is quite impossible, if I may say so with great respect, for any international lawyer to stand up and say that a tribunal will regard a report of the character of M. Renault's as having a conventional force. I say so with great deference to the noble earl, Lord Desart, because I know his immense learning and experience in this matter. All I say is that you must not assume, for the purpose of this discussion, that the report is going to have conventional force. I am sure the noble viscount will not misunderstand me when I use that as a plea for delay and further inquiry. Either there must be in connection with ratification an express reservation as to what the position of the report is to be, or there must be an agreement that the report is to be treated as having conventional force. If that is going to be adopted you must have the differences between the report and the Declaration removed; otherwise you will have the inevitable argument that there is a contradiction between the report and the treaty, and that one must be adopted and not the other, and then, of course, the Declaration would be said to have the greater force. I mention this subject only because I think it quite unsafe—and I speak with a feeling of great responsibility—to advise your lordships or the country to accept this Declaration on the plea that the report will be regarded as binding by some tribunal that comes to consider the matter 15 or 20 years hence.

There is another point that has not been answered. I listened to it with great interest when my noble friend Lord Halsbury spoke. It has been assumed in the course of this debate, and I do not deny that there is some ground for the assumption, that this Declaration will be favorable to Great Britain as long as Great Britain is a neutral. The Lord Chancellor assumed it in the course of his speech, and I do not differ from him in general principle. But the real test of that is the law that is going to be administered by the international prize court. As Lord Halsbury put it in the course of his speech, we ought to have some idea, at any rate, of the extent to which the recognized principles of international law are going to bind the international prize court before we accept the view that this part of the scheme, even from the point of view of neutrals, is quite satisfactory. It seems to be forgotten by those who investigate this subject for the first time that the prize law of the world is really the British prize law, and that since the time of Grotius and those great men of gen-

erations ago who founded the international law all the authorities that have been created have been, practically speaking, created on the authority of British prize law. If your lordships read Storey's Prize Law, the standard book on the subject, the book recognized between the United States and ourselves and by the world generally, and look at the authorities cited there, you will find that nine out of ten of them are the authorities of Lord Stowell and the authorities of the English courts. The American decisions, which are also of very great importance, were based upon the same law. Therefore it is not a vague point which Lord Halsbury put forward when he asked that some assurance might be given as to what law would be administered in this international court of appeal. I mention this again for the purpose of saying that there is room, so to speak, for further consideration; there is a necessity for further reservation; and therefore, without for one moment saying that it is to be in this way or in that way, it seems to me that it is a matter proper to be brought before your lordships' House in order that there may be some further consideration of it before this Declaration is ratified.

I pass from that in order to say a very few words upon what is, after all, the most difficult part of this case. We have been invited to deal with this convention as a whole, and to take this and that, because as a whole it would be desirable and advantageous to us to do so. I quite agree—and I say so most unfeignedly—that with regard to blockade and some of the other minor parts of this Declaration the arrangements seem to me to be very good, and no serious objection can be taken to them. But when we come to chapter 2 relating to contraband of war and chapter 4 as to the destruction of neutral prizes, it seems to me that they call for further consideration. I recognize to the full that the labors of this conference were largely undertaken on the invitation of this country. I recognize that there does rest upon us a moral responsibility to indorse as far as we can the labors of this commission. I am not going to say one single word against that feeling. But when all is said and done we must look, and it is not right to forbid us to look, at the provisions of the Declaration in order to see whether the vital interests of this country are or are not protected, and in my humble opinion those two most important chapters, chapter 2 and chapter 4, which deal with contraband of war and the destruction of neutral prizes, will require reservation. Before the Declaration is confirmed or otherwise the interests of the country require to be protected.

I speak with very great deference, but this is no new subject to me. I had the honor and responsibility of advising Her late Majesty's Government when the South African War began. Up to that time this country had not been involved in any great war since the Crimean War, and—I am telling no secrets—all the questions with re-

gard to contraband had to be revised at the Foreign Office. With the assistance of my distinguished friend Sir Robert Finlay I spent hours and days in considering the matter, and I hope we left it in a little better condition than we found it. I say no more than that. This subject of contraband, of conditional contraband, and of continuous voyage is not a subject that I have had to get up for the purpose of this debate. It has been burnt in upon me by hours and days of study, and therefore I hope I shall not be considered presumptuous in venturing to say a few words to your lordships about this, although, as I say, I had no intention of intervening in this debate at all.

It seems to me that the noble earl, Lord Desart, and my noble and learned friend the Lord Chancellor have pitched their defence in too high a key. It may be that Lord Desart spoke with the feeling of a parent—or rather of a godfather or guardian, and it may be the feeling that this country ought to ratify this Declaration which has prevented them from adequately appreciating the fears and apprehensions that are felt by persons who have considered these articles and whose opinion ought to be regarded. Do not let it be thought that this is a party question. If this was a party question I would not say one single word in reference to it. I have felt that responsibility resting on me throughout the whole of my life in your lordships' House. But I know that fears with regard to this convention are held as strongly by distinguished men who are supporters of His Majesty's Government as by those who oppose the Government. I do not speak without knowledge of this subject, and I have satisfied myself that these fears are entertained by people who have studied the question quite independently of politics. I will not read the articles with regard to contraband of war and foodstuffs nor the articles with regard to the destruction of neutral ships, because your lordships know them by heart, but I ask whether those articles do not require a little further consideration and may not require reservation so as to protect British interests.

One answer given by the noble earl, Lord Desart, the other night, and it has been repeated this evening, was that the proportion of food supplies carried in foreign bottoms is only 10 per cent as against 90 per cent carried in home ships. That may be true. I do not think it is accurate, but I will assume it to be true for the moment; and what I have endeavoured to find out from those who have practical knowledge of this matter—and this is not a lawyers' question—is what the condition of things would be in time of war. I am informed by people whose opinion I can value that you must not assume that that would be the percentage, or anything like the percentage, if this country were at war. Having regard to the high rate of freights that would

prevail in time of war there would be strong competition for carrying our food supplies, and there would be a great inducement to carry them under another flag, and it must not be assumed by any means that the necessities of this country to have her food supplies carried in bottoms other than those flying the British flag would be limited to 10 per cent in the event of a war. Therefore I think, with very great deference to my noble and learned friend Lord Desart, that you can not answer the objections by simply referring to the statistics existing at the present time. Of course we all agree that if the condition of Great Britain was such that her fleet was swept off the seas we need not trouble about anything any more at all. Therefore we need not consider that part of the case.

But that is not the answer that has been given. The answer given both by the noble and learned Lord on the Woolsack and to a certain extent by the noble earl, Lord Desart, is that the interests of this country are protected and the position to a large extent improved by the clause which enables cargoes to go to neutral ports. That is a very dangerous thing to trust to. Of course, if it could be said that the fact that vessels were bound for Havre, or Cherbourg, or Rotterdam, or Dunquerque their destination was conclusive, and should be held to be conclusive by the commander of the warship of the other nation, well and good; but, as has been pointed out over and over again, and as was pointed out in the passage read from this very report, the ship's papers will not be considered by the foreign commander to be conclusive, and I do not think the foreign commander would be doing his duty if he did treat them in every case as conclusive. It is well known to be the commonest thing for neutral vessels to have their bills of lading made out to ports where it is never intended that the cargoes shall be landed, and the answer given the other night seemed to me a very dangerous one. I speak with very great deference in the presence of the Lord Chancellor. He suggested that the position of Great Britain would be improved by the ratification of the Declaration because food supplies could be conveyed via Havre, Calais, Dunquerque, Antwerp, or Rotterdam, but it seems to me that without more information it would be unwise to rely upon this as a practical answer to the objections raised.

My lords, the real fact is, and we ought to recognise it in any consideration of this matter, that Great Britain, with the exception, perhaps, of Japan, stands in a different position from any other of the great nations. America has no fear with regard to her food supplies in time of war. Germany has no fear with regard to her food supplies in time of war, although it may be that they might cost her more having to come by train, say from Russia. But our insular position places us in a more dependent position with regard to our

food supplies than any other nation in the world, except, possibly, Japan. Then with regard to the clause which speaks about a ship being consigned to a base, is anybody wise enough to say what view ought to be taken by a court as to what that means? Can anybody say that a court administering justice and equity must decide that any one port in Great Britain is not a base or that any one port is a base? In these circumstances, it surely is not asking too much to ask that there might be some further inquiry or some reservation before this country is bound by such a provision. Honestly I cannot see that there is any foundation for saying that things would be better under this Declaration than without it. They may not be worse, and, of course, if they will not be worse, then certainly I think the convention ought to be ratified. I have made these observations to your lordships because they struck me as being important points which have come out in this debate which require careful consideration and careful argument. In conclusion, I humbly submit to your lordships' House that, although you may say we get some advantage in other parts of the Declaration, the national interests of our country ought not to be impaired under this convention unless we are satisfied that, practically speaking, the food supplies of this country will not be in a worse position when the convention has been ratified than at the present time.

LORD COURTNEY OF PENWITH.¹ My lords, I rise with every feeling of apology for intruding in this debate, but I think it most desirable that the weighty speech to which we have just listened should not be allowed to pass without one or two very brief comments. I know the audacity of the step I take in speaking after the noble and learned lord. He has had experience, to which he has referred, in international arbitrations which gives him the greatest authority in speaking on this subject. For myself I can claim nothing more than the position of a student of international law; I have been a student of it a good many years, and I can only speak as one who has followed the discussion of this Declaration in the light of previous study.

The noble and learned lord made three points as his reasons for taking the attitude which he did. As to the first point, the difficulty of reading the report with the Declaration, I believe I am accurate when I say that the report of M. Renault was read over clause by clause before the whole body who drew up the Declaration, and on being put by the chairman was assented to by the whole of them. In those circumstances I cannot but conceive that that report has full official authority as the exposition of the Declaration, and that it has the authority which Lord Desart attributed to it of a conventional character. The noble and learned lord pointed out that in cases in

¹ Liberal.

which he has been engaged either as arbitrator or as judge there have often been discussions as to the authorities of treaties and of communications made with respect to those treaties. Might I ask him whether he has had any case which stands on all fours with a treaty between all parties and a declaration agreed on by all the parties simultaneously and exchanged between them, because that would be the only comparison which could be rightly applied to this case.

LORD ALVERSTONE. Not on all fours, but very like it.

LORD COURTNEY OF PENWITH. All fours is the essence of it, because here you have them all assembled at the same time, coming to the same conclusion and giving their authority to it, and therefore you can not distinguish between one act of that body and another act of that body, and I should say you must give it the fullest conventional authority. If you can get the powers who assented to the original Declaration to assent again to a fresh one, no harm would be done; but delay is to be deprecated in this case as indicating some doubt with regard to the conclusions you have arrived at with your fellow diplomats. Also it is quite possible that the ratification might be made taking note of the Declaration as agreed to by the convention, but I have no doubt whatever that the true interpretation which would be put upon this by any international body such as it is proposed to set up would be that the report and the Declaration stand upon an equal footing.

The second point taken by the noble and learned lord was as to the necessity of acceding to the demand of the noble and learned earl, Lord Halsbury, and getting some further definition of the law which is to be administered by the proposed international court. The noble and learned lord was of opinion that you must have a further definition. Why a further definition? In the Declaration itself the law to be set up is explained, and, so far as it has been agreed upon, it is there accepted as the law which is to be administered by the international court. Upon any points which are not yet decided and which are open to conflict of opinion, the law is to be settled in accordance with the principles of equity and justice. The noble and learned earl and the noble and learned lord have a distrust of that latter addition, which is explained in the report of M. Renault as the making of law. Yes, my lords, it is the making of law in the course of fulfilling what has been declared in the Declaration itself. I am not surprised at the two noble and learned lords taking up the position they have done with their strong inheritance of the traditions of the common law. It is the case of equity informing, fulfilling, and, if need be, correcting, common law. Equity prevents the common law being made a means of fraud, and it is in that sense only that the report of M. Renault attributes any law-making power to the international court.

It was with some surprise that I heard the noble and learned lord, the Lord Chief Justice, say that the law of prize courts is the law of England and the law of Lord Stowell. Lord Stowell was the founder of the law which has been adopted by Storey and Wheaton and American jurists. I have the greatest respect for the authority of Lord Stowell, and I agree that to a very large degree he made the law of prize courts throughout the world. But does the noble and learned lord mean to say that in the decisions in respect of prizes taken in the Russo-Japanese War the Russian prize courts followed exactly the law of Lord Stowell? In the case of the ship which has been referred to in the course of the debate, was it Lord Stowell's law that was followed? The supreme merit of the Declaration of London, to my mind, is that it brings the law of the prize courts of the world nearer to the law of Lord Stowell than has hitherto been attained. There is a great deal of distrust felt from the way in which this question has been approached. Distrust of an international court is a thing of which we ought to be a little ashamed. At all events let us consider this: the international prize court would be an embodiment of neutral authority; it would make for neutrals against belligerents; it would reduce the power of belligerents in the interests of neutrals; and it would be to the advantage of the law as declared by ourselves in the past that the international prize court should be set up and developed on those lines.

There was only one other point touched on by the noble and learned lord with which I would ask leave for one moment to deal—namely, the great danger to which we should be exposed under the Declaration of London taken in its entirety in respect to contraband and the supply of food to our country. The noble and learned lord said with great effect, “Who can say what the international court, when it comes to interpret the law in the future, will hold to be a ‘base of supply’?” True, you cannot say in advance what will be the position of that international court, which will be a neutral court standing for the rights of neutrals in the matter, and what it will hold to be a “base of supply.” But let us compare the situation with respect to our security for food supplies in the future as regulated by this Declaration of London with the position in which we are now. Under the present law, if we were a belligerent our enemy might declare every port in the United Kingdom to be a base of supply with just the same power and just the same effect, and the only power there would be to decide whether that was valid or not would be the court of the enemy's own country.

THE MARQUESS OF SALISBURY. Not at all; the power of the neutrals would resist that.

LORD COURTNEY OF PENWITH. No doubt there is a moral force in the power of neutrals. I admit that. But the only court which

would be able to decide whether it was right or not would be the court of the enemy's own country. That is the only way in which the law would be administered. In future, if we were at war, it would be a question again whether Bristol, or any other port, would be held to be a "base of supply." I agree upon that with one point made by the noble and learned lord the Lord Chief Justice—that neutrals would be much larger carriers of food supplies in the future than they have been in the past; but why should the neutrals, who would be so much interested, acquiesce in the claim that every port is a base of supply any more than they have done in the past? And where is the appeal in the future to be? It is to be to an international court which embodies the interests and the views of neutrality, whereas the legal appeal at the present time is to the court of the enemy's own country.

LORD DESBOROUGH. My lords, I can avail myself, I believe, of the right of a very brief reply, having regard to my motion. First of all I should like to express my gratitude to the noble viscount the present leader of the House and to other noble lords for the kind way in which they have expressed themselves with regard to the whole of this debate, and the manner in which it has been conducted. I regret to say, however, that I am still unconverted, although I have listened to all the arguments addressed to your lordships' House and also carried out the remarkable advice showered lately upon us by the Government as to reading certain books. Mr. Bray's book was recommended. I have not only read his book, but I asked him to a dinner of the London Chamber of Commerce a few nights ago at which several international lawyers were present. His book before dinner did not convert me, and certainly his speech after dinner did not, and his arguments were somewhat roughly handled by the international lawyers present. If we are to be asked to read some of the books on their side why should they not read some of ours? We have nine ewe lambs to their one, and why should they not read the protests from the shipping associations and the 30 or so protests from chambers of commerce against the Declaration?

In opening the debate in this House last week I pressed the Government for information on four points. First, is the Declaration, if ratified, binding on the signatory powers even if the prize court is not set up? Secondly, is the commentary of M. Renault to be considered an authoritative interpretation of the Declaration? Thirdly, will the Government name a port in this country to which conditional contraband can be taken in neutral ships in time of war? And, finally, have any countries yet ratified the Declaration? I do not think I have received a categorical answer to those questions, except to the one with regard to a port. The noble and learned Lord on the Woolsack did give an answer with regard to that, and he was good enough to name

Bristol. I am glad to hear that Bristol is a port to which grain can be carried in neutral ships when we are at war, because Bristol is a most important port. I have looked up her commerce for some years past, and I find that in some respects as a grain-importing center she holds an important position. She is the first port in barley in the United Kingdom, and a large amount of foodstuff is imported there. We heard from the Lord Chancellor that Bristol under present conditions is a free port. But I should like to ask him, and this seems to me to be more important, What would the opinion be of a hostile commander who met a neutral ship coming to Bristol? That commander would say, "Bristol is very near Salisbury Plain." I believe that my noble friend on the Woolsack could even now walk from Bristol to Salisbury Plain, where we have one of the largest military encampments in this country, and in his days of greater activity but lesser dignity, when I had the honor of playing cricket with him, he could have walked there and back in the day. It is only 25 miles from Bristol to Bulford Camp, where we have a large permanent artillery station and a great camp of troops, certainly the biggest in this country next to Aldershot. I have been in camp there myself and I know something about it, and I am afraid that under the Declaration Bristol would be considered a port of supply for armed forces, as indeed it is. And certainly in the report of the drafting committee which is signed by M. Renault it would be considered a base for the supply of armed forces. I certainly agree with the noble and learned lord the Lord Chief Justice and the noble lord who has just sat down that in time of war there would be a rush for a neutral flag at first until they saw who was going to be master of the seas and master of the trade routes, and no doubt the grain from North America and the United States would gravitate to United States ports and would be shipped in neutral bottoms and sent to Plymouth, but whether it would get there under this Declaration is another thing. There is also another matter. A great deal of our Atlantic shipping is in the hands of the United States now practically, although the English flag is flown.

With regard to the report of M. Renault, the Secretary of State for Foreign Affairs has distinctly stated that that report is authoritative. I think Lord Desart called it an "inspired commentary," which places it rather higher. I am afraid there was some misunderstanding with regard to this. In my first statement I alluded to M. Renault's report on convention No. 12, which sets up the international prize court, as being vague. It is, indeed, extraordinarily vague. The report certainly says that the prize court is—

to make the law, and to take into account other principles than those to which are submitted the national prize court jurisdiction.

It also says:

How is nationality, property, or domicile to be proved? Is it only by the ship's papers or equally by other documents produced? We intend to leave the court full power of appreciation.

All these matters are most technical. Again the report says:

Every liberty is to be left to the court as to the appreciation of the various elements furnished to it to determine the conclusion. There is not here a legal system of proof.

This was all said when the international system was set up, before the Declaration. That is how the court was set up, and none of the principles of the Declaration were then thought of. My point is that, instead of getting the unity and certainty that we were promised, we should, by adopting the convention and setting up a court in the manner proposed, throw the whole of the existing naval prize law of the world into absolute chaos and confusion.

My lords, at this hour I will not go into the other points, but I should like to say this. I asked whether the Declaration would be binding without the international prize court being set up. The noble viscount the leader of the Government, in his reply, did not seem to be aware of what the Secretary of State for Foreign Affairs had said. The Foreign Secretary said:

The Declaration of London will be applied by the prize courts in the countries which ratify it as part of the law of nations.

We hear much of the appeal to the international prize court, but it does not matter two snaps of the finger what that court decides. It is only a question of compensating the ships that are sunk. It is a question of sending the contraband to the bottom.

I do not intend to press the motion to a division. I am very glad to hear that His Majesty's Government are going, although late in the day, to take our colonies into their confidence. I do not know whether the House is aware that we have already signed at The Hague 13 conventions, 9 of which have been ratified, and I venture to say that the country will be rather surprised when it learns the terms of some of those which have been ratified. As I have said, I am happy to think that sufficient time for the consideration of this document of vital importance has been agreed to by His Majesty's Government, and perhaps the suggestion thrown out by the motion and by the noble and learned lord on my left may, after the colonial conference, be carried into operation. I beg to withdraw the motion.

Motion, by leave, withdrawn.

House adjourned at a quarter before 8 o'clock, till to-morrow, half past 10 o'clock.

HOUSE OF COMMONS.

MARCH 13, 1911.¹

DECLARATION OF LONDON.

Sir William Bull² asked the Secretary of State for Foreign Affairs whether the Government of the United States of America has signified its final adhesion to the Declaration of London.

SIR EDWARD GREY. The United States are signatories of the Declaration of London, which has not yet been ratified either by them or by any other country.

DECLARATION OF LONDON.³

Sir George Scott Robertson asked the Secretary of State for Foreign Affairs whether he was aware that Russia in the war with Japan destroyed five neutral ships which her own courts subsequently found were not liable to condemnation, at the same time exonerating the naval officers concerned on the ground that suspicion justified their action; and, if the Declaration of London were ratified, would it be possible for any neutral ship to be destroyed on suspicion, or under provision 49 of the Declaration of London, unless the vessel were also guilty of breach of blockade, or of unneutral service, or of carrying a cargo more than half of which was contraband.

Mr. McKINNON WOOD. The facts stated in the first part of the question are correct. Under article 49 of the Declaration of London, the destruction of a neutral prize could not under any circumstances be justified, unless she had been engaged in breach of blockade, or in unneutral service, or in the carriage of contraband exceeding in amount half her cargo, or had forcibly resisted the legitimate exercise of the belligerent right of search.

SIR GEORGE SCOTT ROBERTSON. Is it a fact that ships liable to condemnation are ships that practically have become the property of the captors, and if therefore the captors sink and destroy them they are destroying their own property?

Mr. McKINNON WOOD. I think that is a question of which there should be notice.

¹ 22 H. C. Deb., 5 s., 1836.

² Sir William Bull was a Unionist and a strong opponent of the naval prize bill. Something of the man's character and a sidelight on the posters to which reference is made from time to time in the debates may be found in the following extract from *The Times*, London, of February 15, 1911:

"Sir William Bull claims sole responsibility for the recent issue of posters denouncing the Declaration of London, and the Unionist committee formed to oppose the Declaration, of which Mr. Lee is Chairman, dissociate themselves from this step."

³ 22 H. C. Deb., 5 s., 1839.

DECLARATION OF LONDON.¹

Mr. Butcher asked the Secretary of State for Foreign Affairs whether, before finally determining that the Declaration of London does not require the authority of Parliament for its ratification, and that the decisions of our prize courts, founded on the law as laid down in the Declaration, could be enforced without the authority of Parliament against British subjects within British jurisdiction, he will refer to the decision of the Privy Council in 1892 in the case of *Walker v. Baird*, and will consult the law officers of the Crown and inform the House accordingly.

Mr. McKINNON WOOD. I am advised that the case of *Walker v. Baird* has no bearing on the question raised by the honorable and learned member. That case dealt with the question whether the terms of a treaty afforded a good defense to an action for trespass in the municipal courts. I see no need to refer the matter to the law officers of the Crown.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether any power, except Russia, has within the last 30 years treated or attempted to treat cotton as contraband, and, if so, under what circumstances and with what result.

Mr. McKINNON WOOD. The answer is in the negative. So far as I am aware, except in the war between Russia and Japan, there has not been, in the last 30 years, a war in which the question of cotton has been considered important.

MARCH 14, 1911.²

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether he saw any reason to depart from the statement in his letter to Lord Desart of 1st December, 1908, to the effect that it was recognized by the universally acknowledged principles of international law that all prizes ought, if possible, to be brought into a prize court³ and ought not, generally speaking, to be destroyed or otherwise dealt with prior to condemnation; and whether any of the powers represented at the naval conference of London claimed the right to sink neutral vessels suspected of carrying contraband of war except under special and exceptional circumstances.

¹ 22 H. C. Deb., 5 s., 2028.

² 22 H. C. Deb., 5 s., 2040.

³ Sir Edward Grey to Lord Desart, December 1, 1908. *British Parliamentary Paper*, Miscellaneous, No. 4, 1909 [C'd. 4554], p. 20; Scott, *The Declaration of London*, February 26, 1909, p. 210.

SIR E. GREY. The answer to the first part of the question is in the negative. As to the point raised in the second part, although it is true that the powers asserting the right to sink neutral prizes prior to adjudication in a prize court claim to exercise it in exceptional circumstances only, the value of this limitation is under present conditions practically nullified by the fact that, according to the view taken by the Russian, and probably by the other continental prize courts, "the sinking of a vessel is permitted on the personal responsibility of a naval commander, and that therefore the question whether the exceptional circumstances observed by the naval commander in a particular case, which induced him to sink the vessel, were a sufficient justification or not is one for the superior officer of the person who gave the order for sinking her to decide, and not for a prize court." For this theoretical limitation, which has been found to be valueless for practical purposes, the Declaration of London substitutes the real restriction involved in having to submit to the judgment of the prize courts (and in the last instance of the international prize court), the question whether the exceptional circumstances, that alone would justify sinking, did, in fact, exist in a particular case.

MR. BUTCHER. Have not representations been made to His Majesty's Government that the exception in the Declaration of London is singularly vague in its terms?

SIR E. GREY. Various representations have been made. But however vague the particular terms may be, they are very much better than having nothing at all, as is at present the case.

MR. BUTCHER asked the Secretary of State for Foreign Affairs what powers, if any, had ratified the Declaration of London, and when; whether he was aware that, by the Constitution of the United States of America, it was impossible that the decisions of the Supreme Court of the United States should be altered or reserved by the decision of any extraneous tribunal such as an international prize court, and that there was in consequence an insurmountable difficulty in the way of the United States ratifying the prize court convention of 1907 in its present form; whether any steps had yet been taken for modifying such prize court convention; and whether, unless and until such convention was modified so as to permit of its ratification by the United States, the United States Government had refused, or still refused, to ratify the Declaration of London.

SIR E. GREY. I have already stated that the Declaration has not yet been ratified by any power. The answer to the second part of the question is in the affirmative. In order to overcome the difficulty experienced by the United States, they have proposed the signature of an additional protocol to the prize court convention, to be ratified together with the latter. The convention and the protocol have been submitted to and approved by the Senate of the United States. The

protocol has already been signed by a number of powers signatory of the convention, including the United States and Great Britain; but it remains open for further signatures until the date of ratification of the convention. The text of the protocol and correspondence relating thereto are being prepared for presentation to Parliament.

MR. BUTCHER. Will not the protocol have to be signed by all the powers prior to ratification?

LORD NINIAN CRICHTON-STUART. Is it not the fact that even if the Declaration of London is ratified, one of the belligerents can make food supplies pure contraband?

SIR E. GREY. The answer to the last question is certainly in the negative. The question would not have been put if the Declaration of London had been thoroughly understood. The question on the paper is entirely different. I think the signatures of all the powers are required, but I am not sure. Perhaps the honorable gentleman will give me notice of the question.

MR. REMNANT.¹ Can the right honorable gentleman now say when we are likely to have the promised opportunity of discussing the whole matter?

SIR E. GREY. I understood the arrangement to be that it would come before the House of Commons after it had been discussed in the imperial conference.

MR. BUTCHER. It what form will it come before the House of Commons?

MR. SPEAKER. That hardly arises out of the question on the paper.

MR. BUTCHER asked the Secretary of State for Foreign Affairs when the promised further papers bearing on the Declaration of London, and, in particular, the communication from the Commonwealth of Australia in reference thereto, would be laid upon the table; and would he also lay upon the table any correspondence or other papers showing that Germany in 1885 acquiesced in the claim put forward by France in that year to treat rice going to Chinese ports north of Canton as absolute contraband.

SIR E. GREY. The communication of the Commonwealth of Australia will be found on page 9 of the Blue Book No. Cd. 5513, which was presented to Parliament last month. I believe the only other paper which I have said definitely I was prepared to lay is further correspondence with the Bristol branch of the Navy League, correspondence which is not in itself important after what has been laid already. I can certainly add to it Prince Bismarck's statement on the subject. But it is very inconvenient to lay small papers in dribblets, and probably the most convenient course would be to lay another paper in reasonable time before the Declaration of London comes before the House.

¹ Conservative.

MARCH 16, 1911.¹

DECLARATION OF LONDON.

Mr. Pickersgill² asked whether the right honorable baronet's attention has been drawn to the statement of the Lord Chief Justice of England that in his experience before international tribunals he had had to deal with the specific question as to the weight to be given to contemporaneous documents which had passed between nations at the same time as a treaty or convention, and it was impossible for any one who was an international lawyer to say that a tribunal would regard a report of the character of the Renault report as having a conventional force; that if the Renault report was to be regarded as having conventional weight, it should be made a part of the convention; and whether he still adheres to the statement which he made to the Edinburgh Chamber of Commerce on 9th November last, that if the proposed international prize court is set up at The Hague, it will be bound, when applying the provisions of the Declaration of London as between the signatories, to construe the text in conformity with the terms of the Renault report.

SIR E. GREY. My attention has been called to the statement of the Lord Chief Justice referred to, but I am informed that there was a subsequent observation made by him on this point in answer to a question put by Lord Courtney of Penwith, which must also be taken into consideration. The reports referred to by the honorable member are not correctly described as "M. Renault's report." They were, in fact, the report of the second peace conference on the international prize court convention, and the report of the London Naval Conference on the Declaration of London. Reports of this nature, adopted by a formal vote of an international conference for the express purpose of affording an authoritative commentary on conventions concluded by the signatories, stand on a different footing altogether from ordinary diplomatic correspondence or protocols recording the views of individual Governments or delegates. The answer to the second part of the question is in the affirmative.

MR. PICKERSGILL. Will the right honorable baronet state upon what authority his original statement was made as against the very high authority I have quoted?

SIR E. GREY. The original statement was made on what is plain, from the nature of the proceedings, and which I stated in this answer, that the reports were adopted by a formal vote of an international conference, and were, therefore, not on all fours with the instances referred to by the Lord Chief Justice.

¹ 22 H. C. Deb., 5 s., 2428.² Conservative.

MR. PICKERSGILL. On what authority does the right honorable gentleman state that the report of the reporting committee would be binding upon the tribunal?

SIR E. GREY. On the authority of the formal vote of the international conference.

EARL WINTERTON¹ asked whether any pourparlers have taken place between His Majesty's Government and the Government of the United States as to the composition of the tribunal for settling international disputes foreshadowed in President Taft's statement.

SIR E. GREY. The answer is in the negative; the point could not arise till some proposals were under consideration.

EARL WINTERTON asked whether the willingness of His Majesty's Government to enter into an arrangement with another power of first-class importance to refer all international disputes to arbitration has been submitted to the Government of His Imperial Majesty the Mikado of Japan; and, if so, whether he will lay their answer upon the table of the House.

SIR E. GREY. The Japanese Government are aware of the views of His Majesty's Government. The answer to the last part of the question is in the negative.

EARL WINTERTON. In view of the great interest taken in this question at present will the right honorable gentleman reconsider his decision not to lay these papers on the table of the House?

SIR E. GREY. At this stage of the proceedings such a course would be quite premature, even if there were any papers to lay on the table, which I have not admitted in my answer.

EARL WINTERTON. Will the right honorable gentleman consider the point whether he could do so in the future? Does he propose to apply to the Japanese Government?

SIR E. GREY. It would be quite undesirable after I have stated that the Japanese Government are aware of the views of His Majesty's Government to lay on the table at this stage papers relating to what has passed between the two Governments.

EARL WINTERTON. Officially aware or aware from the newspapers?

SIR E. GREY. I think the noble lord must be content with my answer that they are aware of the views of His Majesty's Government. I have expressly stated if any communication had passed this would not be the time to make them public. Obviously, therefore, I can not reply further.

¹ Conservative.

MARCH 20, 1911.¹

DECLARATION OF LONDON.

Sir William Bull asked the First Lord of the Admiralty whether the British naval officers delegated to the conference which drew up the Declaration of London have conveyed to the Government any assurances that, in their opinion, the provisions of the Declaration would be advantageous to this country in the event of the navy being engaged in war.

Mr. McKENNA. The representative of the Admiralty at the conference was in agreement with his colleagues, and although not called upon to give any separate assurance to His Majesty's Government, he concurred in the provisions of the Declaration.

MARCH 21, 1911.²

DECLARATION OF LONDON.

Mr. Butcher asked what continental prize courts, other than Russian in the recent war, have declared that the sinking of a neutral prize is permitted on the personal responsibility of a naval commander and that the question whether the circumstances justified such sinking is one for the superior officer of the naval commander who gives the order, and not for a prize court; and whether this view has met with the acceptance of any of the great naval powers of the world.

SIR E. GREY. As far as I am aware, the war referred to is the only one in which the matter has come before continental prize courts in recent years. I can not speak definitely as to the views of other powers on the particular point raised in the question, but on the general question of the right of a belligerent to sink neutral merchant vessels, several powers, including Austria-Hungary, France, and Germany, voted for the Russian proposition at The Hague conference.

Mr. BUTCHER. Do I understand there is no decision of the prize court to this effect?

SIR E. GREY. As far as I am aware, the war referred to is the only one in which the matter has been before the prize courts.

Mr. Butcher asked whether any attempt was made by our representatives at the naval conference of London to include cotton piece goods on the free list under article 28 of the Declaration of London; whether, under the Declaration of London, it would be competent

¹ 23 H. C. Deb., 5 s., 189.² H. C. Deb., 5 s., 213.

for a belligerent to declare and to treat cotton piece goods as conditional contraband of war and liable to capture as such; and whether in the event of a war in the Far East the treatment of cotton piece goods as conditional contraband liable to capture under the provisions of articles 33 and 34 of the Declaration would have a serious and far-reaching effect on the trade of Lancashire with the Far East, and would tend to paralyze that trade.

SIR E. GREY. The answer to the first part of the question is in the negative. What it is competent for a belligerent under the Declaration to treat as contraband is clearly set out in that instrument. I would draw attention to article 24, by which it is agreed that, among other things, "fabrics for clothing suitable for use in war" may be treated as conditional contraband—for instance, cotton khaki cloth—and to article 27, which provides that articles not susceptible of use in war may not be declared contraband. Accordingly, cotton piece goods may or may not be declared conditional contraband, according as they are or are not suitable for use in war. The proper application of this rule would not have the consequences suggested by the honourable member, and in any case it is the existing practice, and would certainly remain whether the Declaration of London were ratified or not.

MR. BUTCHER. Is there any instance up to the present time where cotton piece goods have been declared conditional contraband by a belligerent?

SIR E. GREY. I cannot undertake to say whether there are any such instances. But it is a well understood practice that things which are intended for the armed forces of the enemy may be declared conditional contraband.

MR. MACCALLUM SCOTT. Seeing that the Declaration of London has now been in existence for two years how can the right honourable gentleman account for the fact that honourable and learned gentlemen opposite have only just made the discovery?

MR. SPEAKER. That does not arise out of the question.

MR. BUTCHER asked the Prime Minister if he will state by what mode of procedure do the Government intend to take the opinion of the House on the question whether the Declaration of London should be ratified or not; and, if the Government have no such intention, what opportunity will be afforded to private members for raising the question in a definite manner.

THE PRIME MINISTER (MR. ASQUITH). I do not think that the honourable and learned member can have seen the answer which I gave to the noble lord the member for Portsmouth on 9th February, when I said that in our opinion a convenient opportunity for discussing the whole of the Declaration of London will arise on the second reading of the naval prize bill.

Mr. BUTCHER. May I ask in what form the question can be raised in a definite manner on that occasion?

The PRIME MINISTER. Well, sir, we will consider the matter, and I have no doubt that an adequate and proper form can be devised.

Mr. BUTCHER. May I ask whether the right honorable gentleman will take care that, in view of the very difficult and very important nature of the question, full and adequate time should be given for the discussion?

The PRIME MINISTER. Yes, sir. I have no doubt it will be possible, without defining what is full and adequate time.

Mr. W. R. PEEL.¹ May I ask whether it is not a fact that the two questions—the setting up of an international prize court, and the ratification of the Declaration of London—are two quite different questions, and how, in view of the fact that this House might be in favor of the one and against the other, it will be able to express its opinion on the second reading of the naval prize bill?

The PRIME MINISTER. That was a matter frequently discussed in the last parliament, and I do not think there is any practical difficulty.

MARCH 23, 1911.²

DECLARATION OF LONDON.

Mr. Hamilton Benn³ asked the Secretary of State for Foreign Affairs whether in view of the fact that the correspondence between the Foreign Office and various chambers of commerce and other bodies on the subject of the Declaration of London had been published up to a certain point in White Paper Cd. 5418, he would cause the paper to be reprinted, with the addition of the subsequent correspondence, and laid before both Houses.

SIR E. GREY. I would refer the honorable member to the answer which I gave on the 14th instant to the honorable member for York, to which I cannot usefully add anything at this stage.

MARCH 27, 1911.⁴

HAGUE CONVENTION.

Mr. Shirley Benn³ asked the Secretary of State for Foreign Affairs whether he will lay upon the table the papers wherein the Government declared their intention of ratifying The Hague Convention before finding out the will of Parliament.

¹ Unionist.

² 23 H. C. Deb., 5 s., 585.

³ Conservative.

⁴ 23 H. C. Deb., 5 s., 874.

Mr. McKINNON WOOD. I do not know to what papers the honorable member refers. Thirteen conventions and one declaration were signed by the British representatives at the second peace conference. Of these, eight conventions and the declaration, which did not require fresh municipal legislation, were ratified by the King on the advice of his responsible ministers. The remainder require legislation, for which a bill will shortly be introduced, and they will not be ratified by the King till the measure has been passed by the House of Commons. Where legislation is required, the carrying out of an intention to ratify any particular convention is, of course, dependent upon the passing of that legislation by the House of Commons.

Mr. Shirley Benn asked if, in case His Majesty should not ratify the convention signed at The Hague in 1907, owing to Parliament not passing the necessary legislation, the Declaration of London would fall to the ground.

Mr. McKINNON WOOD. The Declaration of London will not be ratified, as has been repeatedly stated, till after there has been an opportunity for discussing it in the House. Till that has taken place, it is not necessary to consider the point raised in the question.

DECLARATION OF LONDON.¹

Sir William Bull asked the First Lord of the Admiralty whether he will lay upon the table a copy of the instructions given to the British naval delegates who attended the conference which formulated the Declaration of London.

Mr. McKENNA. Separate instructions were not given to the British naval delegates who took part in the international naval conference in London. The instructions of His Majesty's Government to the British plenipotentiary, the Earl of Desart, will be found in Parliamentary Paper Cd. No. 4554 of 1909.

Sir William Bull asked the First Lord of the Admiralty whether he will request the British naval delegates who attended the conference which formulated the Declaration of London, to draw up a report, showing their opinion as to the advantages or disadvantages likely to accrue to the British Navy in war time by the Declaration of London, if it is finally ratified.

Mr. McKENNA. As stated in the reply to the honorable member's previous question of Monday last, the representatives of the Admiralty at the international naval conference, while not called upon to give any separate assurance to His Majesty's Government, concurred in the provisions of the Declaration. It is not proposed to call for any separate report such as that suggested.

¹ 23 H. C. Debs., 5 s., 1095.

MARCH 28, 1911.¹

DECLARATION OF LONDON.

Mr. Butcher asked whether the right honorable gentleman's attention had been called to the terms of article 49 of the Declaration of London, which authorizes the sinking of a neutral prize if the taking of the prize into a port for adjudication—peut compromettre le succès des opérations dans lesquelles le bâtiment de guerre est actuellement engagé—and whether the French words above quoted are accurately translated by the words "would involve danger to the success of the operations in which the warship is engaged at the time."

SIR E. GREY. The answer is in the affirmative. If the honorable member will refer to the report of the conference, on article 49 (page 56 of the Blue Book, No. 4, Miscellaneous, 1909), he will see that the French words employed were expressly declared to be the equivalent of the words of the English translation.

Mr. BUTCHER. Are we to take it that the report is competent to say what the English equivalent of the French term is?

SIR E. GREY. You can not get a more accurate translation than the one specially agreed upon by the whole conference as being accurate. They discussed this very point, and it was agreed that this should be regarded as the equivalent.

Mr. BUTCHER. In view of the numerous statements made as to the mistranslation of the original text by the United States and others, will the right honorable gentleman direct that a new translation be made?

SIR E. GREY. I am not aware that any of the complaints are well founded.

Mr. Russel Rea² asked whether the right honorable gentleman will consent to publish a statement of the representations which were made by chambers of commerce and shipping associations during the Russo-Japanese War to the late Foreign Secretary, with a view of obtaining a clearer definition of contraband, and the replies which were made by Lord Lansdowne.

SIR E. GREY. I am having the papers examined, with a view to including them when further papers are laid.

Mr. Butcher asked the Prime Minister whether, in view of the fact that some members of this House might desire to support the second reading of the naval prize bill who were opposed to the ratification of the Declaration of London, and that other members might desire to oppose such second reading who were in favour of such

¹ 23 H. C. Deb., 5 s., 1117.

² Mr. Rea, a ship-owner and merchant, had been an active Liberal in Parliament for some years and was at this time chairman of the Economics Committee.

ratification, he would inform the House at what stage in the proceedings on the naval prize bill, and by what mode of procedure, the opinion of the House could be taken on the definite question whether the Declaration of London should be ratified or not.

The PRIME MINISTER. (Mr. Asquith.) The undertaking that His Majesty's Government have given will be fulfilled when the time comes in whatever way is found to be for the general convenience of the House and the course of public business. The undertaking can not be carried out until the matter has been brought before the imperial conference.

Mr. PEEL. Is the Prime Minister aware that in another place they have had an opportunity of discussing the Declaration of London for three whole days? Will he give this House a similar opportunity?

The PRIME MINISTER. I can not say what goes on in another place.

Mr. PEEL. The Secretary of State for War will tell you.

Mr. BUTCHER. Will the Prime Minister state for the convenience of the House the form in which this very important question can be raised here?

The PRIME MINISTER. I think it would be premature to do so yet. It has to go before the imperial conference, and that can not be before the month of May.

Mr. H. W. FORSTER.¹ Will this House be given no opportunity of discussing the question until after the imperial conference?

The PRIME MINISTER. No.

Mr. BUTCHER. Is the Prime Minister aware of the very great importance attached to this question by chambers of commerce and other important commercial bodies throughout the country?

The PRIME MINISTER. I thought it was the general desire of the House that the imperial conference should first have an opportunity of considering the matter.

APRIL 4, 1911.²

DECLARATION OF LONDON.

Mr. Butcher asked whether he is aware that the question of the proper English translation of the words in article 49 of the Declaration of London—*compromettre le succès des opérations dans lesquelles le bâtiment de guerre est actuellement engagé*—is not in any way referred to in M. Renault's report; and whether, in view of these facts, he will reconsider the question whether those words are accurately translated in the English version issued by the Foreign Office by the words "involve danger to the success of the operations in which the warship is engaged at the time."

¹ Conservative.

² 23 H. C. Deb., 5 s., 1973.

SIR E. GREY. The translation accurately renders the meaning of the French, and makes use of the term specifically indicated in the report of the conference.

MR. JAMES MASON.¹ Does the right honorable gentleman not consider that the phrase "prejudice the success" is a much more accurate translation and involves an entirely different meaning than "danger to the success"?

SIR E. GREY. I do not think it is. I think the phrase "involve danger" or "endangering" is the most accurate rendering of the meaning of the French.

MR. BUTCHER asked whether the scope of article 34 of the Declaration of London, read in conjunction with article 33, is correctly stated in the letter of the 13th October, 1910, from the Foreign Office to the Glasgow Chamber of Commerce (Cd. 5418, p. 6), to be to relieve the captor of the obligation of proving in cases specified in article 34 that the destination of foodstuffs, and other articles of conditional contraband, was the military or naval forces of the enemy, and to shift the onus of proof in these cases from the captor on to the owners of the captured goods; whether in those specified cases the practice apart from the Declaration of London has been to throw the onus of proof on the captor; whether his attention had been called to a speech delivered by the Under-Secretary of State for Foreign Affairs at the Baltic, on the 15th March, 1911, in which, referring to articles 33 and 34, the Under-Secretary stated that the past practice had been to throw the burden of proof as to the destination of conditional contraband on the owners of the captured vessel or goods; and whether, in view of the previous statements on the subject by the Foreign Office, this statement of the Under-Secretary can be regarded as accurate.

SIR E. GREY. The statement in the Foreign Office letter referred to means relief from the obligation imposed by the Declaration of London, which is the opposite of the existing practice. Both it and the extract quoted from the speech of the Under-Secretary of State are accurate. In actual practice under the existing law, the neutral owners have always found that the burden of proof in proceedings before a prize court is laid upon them. This will be fundamentally changed by the Declaration of London, which, for the first time, establishes the general rule that the burden of proof shall lie on the captor. Only in certain exceptional cases, namely, those covered by the presumptions set up under article 34, will the burden of proof, contrary to the new general rule, rest on the neutral owners and not on the captors. In these cases, but in these cases only, the present practice will be retained.

¹ Chairman of the Unionist committee formed to oppose the Declaration.

Mr. JAMES MASON. May I have a copy of the answer?

SIR E. GREY. Certainly.

Mr. Eyres-Monsell asked whether the right honorable gentleman now has any information to show that the Government of the United States of America have declined to accept as authoritative the Foreign Office official translation of the Declaration of London, as published in Blue Book 4554 and have had a fresh translation made; and, if so, could he state what is the translation of the word "commercant," which appears in article 34?

SIR E. GREY. The United States Government have agreed to discuss with His Majesty's Government the question of the English translation of the Declaration, with a view to the adoption of the common version to be officially adopted for the use of the navies of both countries. Pending the result of such discussions, I am unable to make any statement on points of detail.

Mr. James Mason asked the Prime Minister whether, in view of the expressed determination of other powers to reserve to themselves the right to convert merchant liners into warships without notification, His Majesty's Government propose to take steps with a view to securing that British merchant liners shall be equipped with adequate means for meeting such contingencies in case of war.

FIRST LORD OF THE ADMIRALTY (Mr. McKenna). The Admiralty are prepared to meet the contingencies anticipated in the honorable member's question, and to take all necessary steps for the protection of British trade.

Mr. James Mason asked the Prime Minister whether the Declaration of London will be submitted to the approval of Parliament or of the House of Commons only.

THE PRIME MINISTER (Mr. Asquith). A promise has been given that there will be a full opportunity for discussion of the Declaration of London in the House of Commons before ratification. That promise holds good, and I am not prepared to go beyond it.

Mr. JAMES MASON. Will the right honorable gentleman say on what grounds he bases his application of single-chamber government to this question?

THE PRIME MINISTER. The House of Lords has spent three nights already upon it.

APRIL 6, 1911.¹

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether he will say in what part of Mr. Renault's report, and on what page of the Blue Book Cd. 4554 any reference is made to the

¹ 23 H. C. Deb., 5 s., 2398.

correct translation of the French words in article 49 of the Declaration of London—*peut compromettre le succès des opérations*—and whether the only reference in that report to the correct translation of the French of article 49 is in regard to the words—*peut compromettre la sécurité du bâtiment de guerre*.

SIR E. GREY. The only direct reference is as stated, but the honorable member must be aware that the word “*compromettre*” occurs only once in the article, and that it refers both to the ship and to the operations. In so far as the report of the conference indicates the proper English translation of one of the phrases of which the word “*compromettre*” forms the essential part, it naturally affects the translation of both the phrases grammatically dependent from the same verb.

Mr. BUTCHER. Does not the right honorable gentleman think the context of the word “*compromettre*” is different in the two cases?

SIR E. GREY. I do not think it is. I think it is the same, and therefore it is properly translated by the same expression.

Mr. BUTCHER. Can the right honorable gentleman say what the American translations of these words are?

SIR E. GREY. I think the American version is the same, but I am not certain. I ask the honorable member to give notice. I think in these two instances it is the same.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether his attention had been called to the passage in M. Renault's report, on page 49 of the Blue Book, Cd. 4554, which states that the true destination of conditional contraband will usually be more or less concealed, that the captor must prove it in order to justify their capture, that in the absence of the presumptions contained in article 34 the destination is presumed to be innocent, and that this is the ordinary law, according to which the captor must prove the illicit character of the goods which he claims to capture; and whether, in view of this statement, reliance can be placed on the statement of the Under-Secretary of State for Foreign Affairs at the Baltic, on the 15th March, 1911, that the past practice has been to throw the burden of proof as to the destination of conditional contraband on the owners of the captured vessel or goods.

SIR E. GREY. I must point out that to speak of “M. Renault's report” is an incorrect and misleading description of the report of the conference. Hitherto the ordinary law as administered by prize courts has not placed the burden of proof upon the captor: that the [has?] been the case, for instance, in the Russian prize courts and in our own. The Declaration of London for the first time establishes the general rule that the burden of proof lies on the captor, and it is to this that the report refers.

Mr. BUTCHER. Can the right honorable gentleman refer to any authority which tells us that in ordinary cases the burden of proof in such matters is not on the captor but upon the owner of the captured boat?

SIR E. GREY. I am informed that has been the case in the Russian courts, and even in our own prize courts.

Mr. BUTCHER. Is there any authoritative statement on the subject in any book?

SIR E. GREY. Of course, the important thing in these matters is the practice of the prize courts. We find that the practice of the Russian prize courts and the British prize courts is what I have said, and that is a strong indication of what the rule is.

APRIL 10, 1911.¹

DECLARATION OF LONDON.

Lord Ninian Crichton-Stuart asked the Secretary of State for Foreign Affairs whether article 34 of the Declaration of London was based on the second and ninth paragraphs of article 18 of the German Admiralty draft, as on page 5 of the Blue Book Cd. 4555, 1909.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The text of the Declaration and the draft proposals of the German Government are set out in full in the Blue Book to which the noble lord refers. He is able to compare them for himself.

Lord Ninian Crichton-Stuart asked whether the translation, in French, of article 18 of the German draft of the Declaration of London, as published in Blue Book, Cd. 4555, 1909, page 5, is a literal translation of the German; and whether the German draft was submitted by the German Admiralty to the British Foreign Office prior to the conference of London, 1908.

Mr. MCKINNON WOOD. If the noble lord will consult the Blue Book (Command No. 4554), he will find, on reference to page 13, that the draft was communicated to the Foreign Office by the German chargé d'affaires on 21st August, 1908. The German text was accompanied by a French translation prepared by the German Government themselves, and it is this translation which was laid before the conference.

Lord Ninian Crichton-Stuart asked whether article 33 of the Declaration of London was based upon the first paragraph of article 18 of the German draft of the Declaration of London.

¹ 24 H. C. Deb., 5 s., 8.

Mr. McKINNON WOOD. I do not know what the noble lord means by the German draft of the Declaration of London. I have never heard of the existence of such a document.

Mr. George Terrel¹ asked the Prime Minister whether, in view of the differences of opinion which have been expressed on both sides of the House in regard to the Declaration of London he will arrange that the division as to its ratification will be conducted on non-party lines.

The PRIME MINISTER (Mr. Asquith). I can not give any pledge in regard to this at present.

Mr. BUTCHER. Will the right honorable gentleman undertake that the party whips shall not be put on for this division?

The PRIME MINISTER. I have nothing to add to the answer to the question.

MAY 1, 1911.²

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether his attention has been drawn to a statement by Lord Desart, on 13th March last, in which, referring to the general report of the drafting committee to the recent naval conference, generally known as M. Renault's report, and so referred to in the letter of the British delegates to Sir Edward Grey of 1st March, 1909, Lord Desart stated that this report would, according to the practice of continental courts, be accepted as an authoritative commentary, but in English and American courts such a document might not be accepted as authoritative;³ and whether, in view of this statement by His Majesty's plenipotentiary at the naval conference, the Government still adhere to the view that the report in question must be accepted by the English and American courts as an authoritative interpretation of the text of the Declaration of London.

Mr. ILLINGWORTH.⁴ I must once more point out to the honorable member that it is misleading to describe the report of the drafting committee of the naval conference as Monsieur Renault's report, and that it is not, so far as I am aware, generally known as such. My attention has been called to the statement by the Earl of Desart which is quoted in the honorable member's question, but I shall be glad if he will give me notice of the precise words to which he refers as indicating the view of His Majesty's Government, and also the occasion when they were used.

Mr. BUTCHER. Is the honorable gentleman aware that the report of the drafting committee is referred to in a letter of the British

¹ Conservative.

² 25 H. C. Deb., 5 s., 7.

³ Cf. *supra*, p. 108.

⁴ Liberal.

delegates to Sir Edward Grey of 1st March, 1909, as Mr. Renault's general report?

Mr. ILLINGWORTH. No. I will ascertain for the information of the honorable gentleman.

MAY 4, 1911.¹

DECLARATION OF LONDON.

Captain Faber² asked the Prime Minister whether, seeing that the United States naval authorities had declared that the Declaration of London was thoroughly unfavourable to Britain, he would allow the bill to be non-controversial when it came before this House.

The PRIME MINISTER. I have no knowledge of the statement referred to, but I fail to understand why such a statement, if made, should render the naval prize court bill non-controversial.

Captain FABER. Has not the right honorable gentleman seen or heard of the great naval authority in the United States who has issued a pamphlet on this subject?

The PRIME MINISTER. No; I have not.

Captain FABER. Will the right honorable gentleman inquire?

MAY 8, 1911.³

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs, whether his attention had been drawn to a statement by Lord Desart, on 13th March last, in which, referring to the general report of the drafting committee to the recent naval conference, generally known as M. Renault's report, and so referred to in the letter of the British delegates to Sir Edward Grey of 1st March, 1909, Lord Desart stated that this report would, according to the practice of continental courts, be accepted as an authoritative commentary, but in English and American courts such a document might not be accepted as authoritative; whether His Majesty's Government agreed with this statement of Lord Desart; or whether they considered that the report in question must be accepted by the English and American courts as an authoritative interpretation of the text of the Declaration of London.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The question asked by the honorable and learned member is the same as the question he asked last Monday, with a slight difference of phraseology. The honorable and learned member is

¹ 25 H. C. Deb., 5 s., 590.

² Conservative.

³ 25 H. C. Deb., 5 s., 820.

again asking me to discuss matters of argument and opinion which, I venture to think, are not suitably dealt with at question time. The honorable and learned member will have full opportunity for raising any such question he desires to raise when the matter is debated in the House.

Mr. BUTCHER. Does His Majesty's Government agree with the statement by Lord Desart, mentioned in the question?

Mr. McKINNON WOOD. That again is a matter of argument. I do not think the statement quoted by the honorable and learned member represents very accurately the views of Lord Desart. I am not aware that there is any difference of opinion between His Majesty's Government and Lord Desart on the question.

Mr. ARTHUR LEE. How soon are we likely to have an opportunity of discussing the matter in the House?

Mr. McKINNON WOOD. I am afraid I can not reply to that.

MAY 22, 1911.¹

DECLARATION OF LONDON.

Captain Faber asked (1) whether the naval Lords of the Admiralty now approve of the ratification of the Declaration of London; and (2) whether the naval lords were, or were not, given a voice in the matter of The Hague Conference before Sir Edward Fry consented to the Declaration of London.

Mr. McKENNA. It would be contrary to practice to refer to the action of individual members of the board in matters upon which the board has come to a conclusion. I would point out, however, that Sir Edward Fry was not concerned with the Declaration of London of 1909, but only with The Hague Conference of 1907.

Mr. LEE. Is it the case that the board, as a board, have come to a definite conclusion with regard to the Declaration of London?

Mr. McKENNA. Yes; certainly, the board have come to a conclusion.

Mr. LEE. Has the fully constituted board, as distinguished from the technical board, composed of the First Lord of the Admiralty and one other member?

Mr. McKENNA. There is no distinction between the full board and the technical board. All questions do not necessarily go before the full board at all times, but documents and matters of detail, when a member of the board wishes, go before the whole board. All papers, as the honorable gentleman knows, are ordinarily dealt with under the minute laid down by the First Lord of the Admiralty and by the naval lord concerned in the particular branch of business.

Mr. LEE. That means that it is not dealt with at a full board meeting?

Mr. McKENNA. From memory I could not say.

MAJOR ANSTRUTHER-GRAY.¹ May I ask whether the full board do approve of the Declaration of London?

Mr. McKENNA. The board have approved of the Declaration of London.

MAJOR ANSTRUTHER-GRAY. Not the full board?

Mr. McKENNA. We do not distinguish. If the honourable gentleman by "full board" means whether every member of the board has agreed, it would be contrary to the public interest to state what the opinion of individual members of the board may be, and I do not know what they may be, but the members of the board, as a board, have agreed.

MAY 24, 1911.²

DECLARATION OF LONDON.

Captain Faber asked the Prime Minister if he will state how many chambers of commerce have up to the present condemned the Declaration of London; and how many have pronounced in favor of it.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). I am not in a position to give the information desired. I may, however, say that 40 chambers have forwarded to the Secretary of State for Foreign Affairs resolutions criticising or objecting to various points in the Declaration.

CAPTAIN FABER. Have any chambers sent resolutions in favor of the Declaration, and, if so, how many?

Mr. McKINNON WOOD. I am not able to tell the honorable member. There are one or two.

CAPTAIN FABER. Will that be represented to the colonial premiers at the conference which is now sitting?

Mr. McKINNON WOOD. I think the facts are sufficiently notorious without making any representations.

MAY 30, 1911.³

DECLARATION OF LONDON.

Mr. Hunt asked the Secretary of State for Foreign Affairs whether his attention had been called to the great protest made by the Chamber of Shipping of the United Kingdom against the ratifi-

¹ Unionist.

² 26 H. C. Deb., 5 s., 258.

³ 26 H. C. Deb., 5 s., 880.

cation of the Declaration of London; and whether, in view of the fact that the views of our overseas dominions were not obtained before the Declaration was signed, he would now call the attention of the premiers of our overseas dominions at the present conference to the movement to prevent the Declaration of London being ratified.

SIR E. GREY. It has been repeatedly stated that the whole subject will be discussed at the conference.

MR. HOLT.¹ May I ask my right honourable friend whether he is aware that the Liverpool Steamship Owners Association and large numbers of steamship owners in the country are very anxious to have the Declaration ratified?

SIR E. GREY. It is quite true that at the Foreign Office we have received representations strongly in favour of the Declaration of London as well as on the other side.

MR. HUNT. May I ask the right honourable gentleman whether, when this is to be discussed at the imperial conference, he will point out the strenuous opposition of shipowners and the great majority of Admiralty experts of this country to the Declaration of London on account of the danger of starvation and other great dangers?

SIR E. GREY. The question of the views of particular individuals is one for themselves to make known.

MR. MITCHELL-THOMSON.² Can the right honourable gentleman say whether the discussion will be on a formal resolution or whether it will be more or less informal?

SIR E. GREY. It will be discussed at the conference, and not at the private proceedings of the Committee of Defence. I understand it comes up at the conference on notice which has been given by the Government of Australia, but exactly what form the discussion will be of course I cannot foretell.

MAJOR ANSTRUTHER-GRAY. Will this House have an opportunity of discussing it?

SIR E. GREY. That has been repeatedly stated.

JUNE 14, 1911.³

NAVAL PRIZE BILL.

“To consolidate, with amendments, the enactments relating to naval prize of war,” presented by Sir Edward Grey; to be read a second time upon Monday, 26th June, and to be printed.⁴

¹ Richard D. Holt, a partner of Alfred Holt & Co., steamship-owners, Liberal.

² Conservative.

³ 26 H. C. Deb., 5 s., 1525.

⁴ For the text of this bill see Appendix, *post*, p. 710.

JUNE 19, 1911.¹

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether, in view of the fact that the question of the legality of the conversion of merchantmen into warships on the high seas is left unsettled by the Declaration of London, the international prize court, when established, would not, under The Hague Conference of 1907, be entitled and bound to decide all questions relating to such conversion in accordance with what the majority of that court might conceive to be the general principles of justice and equity; and whether such decisions of the international prize court would not be binding upon and enforced against British subjects; and whether His Majesty's Government still adhere to their expressed views that, in the event of an international prize court being established and the Declaration of London being ratified, our position as regards questions left unsettled by the Declaration will be the same as it has hitherto been.

The UNDER-SECRETARY FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). It is impossible to discuss these complicated matters within the limits of the reply to a question, but the subject will be dealt with fully in debate within a very short time.

Mr. BUTCHER. In view of the forthcoming debate on the naval prize bill and the Declaration of London, is it not right that Parliament and the country should know the views of the Government before the debate comes on?

Mr. MCKINNON WOOD. The views of the Government will be clearly expressed on that occasion.

Mr. BUTCHER. Can not the honorable gentleman give an answer to a comparatively simple question?

Mr. MCKINNON WOOD. No discourtesy was intended in my reply. I have tried to give an answer, but I could not reply to the question in less than 10 minutes.

CAPTAIN CRAIG.² Do not the Government change their views from day to day?

Mr. MCKINNON WOOD. No, sir.

MAJOR ANSTRUTHER-GRAY. Is it not worth while spending 10 minutes in order to elucidate the views of the Government?

Mr. Butcher asked which, if any, of the powers represented at the London naval conference have up to the present time ratified the Declaration.

Mr. MCKINNON WOOD. The Declaration has not yet been ratified by any power.

Mr. BUTCHER. Have any other powers acceded to the Declaration?

Mr. MCKINNON WOOD. All the powers that were parties to the international conference have signed the Declaration.

Mr. BUTCHER. But have any of the powers not party to the international conference acceded to the Declaration?

Mr. MCKINNON WOOD. I must ask for notice of that.

Mr. BUTCHER. How many years will have to elapse before the Declaration can be amended?

Mr. SPEAKER. That is a question of which notice should be given.

Mr. BUTCHER asked the Prime Minister whether, in view of article 69 of the Declaration of London, which provides that none of the signatory powers can denounce the Declaration until the end of a period of 12 years, beginning 60 days after the first deposit of ratifications, this country will not, during that period, be deprived of all right to insist on any improvements in the Declaration; and whether, in view of these facts, he adheres to his statement at the imperial conference, on 2d June, 1911, that, by ratifying the Declaration of London now, His Majesty's Government did not in the least prejudice their freedom of action in regard to advocating further improvements in the future; and whether His Majesty's Government attach any value to their alleged freedom of action in regard to advocating such improvements.

The PRIME MINISTER. I see no reason to qualify in any way the statement referred to. The great advance in international law and practice marked by the Declaration of London is happily secured for a fixed term of years. That provision does not at all preclude any of the parties to the Declaration from advocating still further progress in the way of international agreement, and our freedom of action is, in the opinion of His Majesty's Government, not less valuable than it was before.

Mr. BUTCHER. Does the right honorable gentleman anticipate any other powers will accept an improvement in the Declaration, and, if so, can not that be provided for before the ratification of the Declaration rather than after?

The PRIME MINISTER. No, sir, the Declaration is such a substantial advance that we heartily desire its ratification at the earliest possible moment.

Mr. Newman¹ repeated his suggestion that this debate should not be conducted on party lines.

¹ Conservative.

DECLARATION OF LONDON.¹

Mr. Butcher asked the Secretary of State for Foreign Affairs whether, in view of the fact that the question of the legality of the conversion of merchantmen into warships on the high seas is left unsettled by the Declaration of London, the international prize court, when established, would not under The Hague Conference of 1907 be entitled and bound to decide all questions relating to such conversion in accordance with what the majority of that court might conceive to be the general principles of justice and equity; and whether such decisions of the international prize court would not be binding upon and enforced against British subjects; and whether His Majesty's Government still adhere to their expressed views that, in event of an international prize court being established and the Declaration of London being ratified, our position as regards questions left unsettled by the Declaration will be the same as it has hitherto been.

Mr. McKINNON WOOD. It is impossible to discuss these complicated matters within limits of the reply to a question, but the subject will be dealt with fully in debate within a very short time.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether he will state which, if any, of the powers represented at the London naval conference have up to the present time ratified the Declaration.

Mr. McKINNON WOOD. The Declaration has not yet been ratified by any power.

JUNE 20, 1911.²

DECLARATION OF LONDON.

Mr. Hunt asked the Prime Minister whether he can now say on what days the Declaration of London will be discussed; and whether the House of Lords will also have an opportunity of discussing it before it is ratified.

The PRIME MINISTER (Mr. Asquith). The Declaration of London has already been discussed in the House of Lords in a debate which extended over three days, the 8th, 9th, and 13th March.

Mr. HUNT. Is the right honorable gentleman aware that on 21st July, 1910, the Under-Secretary for Foreign Affairs stated that the Declaration of London would not be ratified unless passed by Parliament, and is it not a fact that "Parliament" means both Houses?

¹ 27 H. C. Deb., 5 s., 125.

² 27 H. C. Deb., 5 s., 145.

The PRIME MINISTER. No. It would make no difference to the action of His Majesty's Government whether the House of Lords approved or disapproved of it.

Mr. KING.¹ May I ask the Prime Minister whether, before the discussion on the Declaration of London in this House, he will cause an official report of the debate in the colonial conference to be circulated amongst members?

The PRIME MINISTER. I hope it will be circulated at once. The labours of the conference concluded to-day, and the proceedings will be published as soon as possible.

SIR F. BANBURY.² When does the right honorable gentleman propose to take the naval prize bill?

The PRIME MINISTER. I am going to answer that question.

Mr. REMNANT. In reference to the Declaration of London, I wish to ask the Prime Minister whether, in a matter of so great and grave importance he will allow the official whips to be withdrawn from the division?

The PRIME MINISTER. No, sir; certainly not. This Declaration has been approved of by His Majesty's Government after the fullest examination and consideration of the subject. We regard it as a matter of high policy and we are not going to abdicate our responsibility by leaving it an open question.

BUSINESS OF THE HOUSE.³

* * * * *

The PRIME MINISTER. On Wednesday we shall take the second reading of the naval prize bill.

JUNE 26, 1911.⁴

DECLARATION OF LONDON.

Mr. Butcher asked the Prime Minister whether, seeing that no party issue is involved in the Declaration of London, His Majesty's Government will allow the question of appointing a commission of experts to examine into and report upon the subject to be decided by a vote of the House of Commons as a non-party question, and will not allow the ordinary party machinery to be used to influence such decision.

The PRIME MINISTER (Mr. Asquith). I must refer the honorable and learned member to the answer which I gave to the honorable

¹ Liberal. ² Conservative. ³ 27 H. C. Deb., 5 s., 150. ⁴ 27 H. C. Deb., 5 s., 235.

member for the Holborn Division on Tuesday last. To that statement I have nothing to add.

Mr. BUTCHER. In view of the fact that all that is asked for in the notice of motion which stands in my name is that we should postpone our decision until fuller and clearer information has been obtained will the right honorable gentleman dispense with the services of the party whips on that occasion?

The PRIME MINISTER. No, sir; His Majesty's Government take full responsibility for this Declaration, and we shall ask for the assent of Parliament to it.

Mr. BUTCHER. Can the Government not trust their followers?

FIRST SEA LORD'S MEMORANDUM.¹

Mr. William Peel² asked, in view of the authorization by the Admiralty of the publication of the First Sea Lord's memorandum of 19th November, 1910, on the risk of invasion, do His Majesty's Government propose to publish a similar memorandum by the First Sea Lord on the effect of The Hague conventions and the Declaration of London; and will the opinion thereon of the First Sea Lord be communicated to this House before this House is asked to agree to a second reading either of the naval prize bill or of the second peace conference (convention) bill?

The PRIME MINISTER. The answer to the question is in the negative.

Mr. PEEL. Does the right honorable gentleman only ask for the publication of the expressions of opinion of the higher officials when those opinions agree with those of the Government?

The PRIME MINISTER. The answer to the question is in the negative.

NAVAL PRIZE BILL.³

Mr. James Mason asked the Prime Minister whether he will direct the preparation of a statement showing which of the provisions of the naval prize bill are consolidation of existing law and which of its provisions are or contain new matter; and whether he will lay such statement on the table of the House at an early date.

The PRIME MINISTER. If the honorable member will refer to the printed copies of the bill, he will see that the marginal notes cite the corresponding sections of the existing acts of Parliament. A comparison of those sections with the clauses of the bill will indicate the extent to which new matter has been included in the bill.

¹ 27 H. C. Deb., 5 s., 236.

² Unionist.

³ 27 H. C. Deb., 5 s., 237.

Mr. BUTCHER. Are we to understand that where there are no marginal notes the bill applies to new matter?

The PRIME MINISTER. It is either new matter or old matter reproduced.

Mr. BUTCHER. How are we to distinguish between new and old matter when apparently a marginal note in reference to a statute means nothing at all?

The PRIME MINISTER. That is not a proper inference from my answer at all. A little ordinary research will enable the honorable member to see what is new and what is old.

JUNE 28, 1911.¹

DECLARATION OF LONDON.

Mr. Peel asked the First Lord of the Admiralty, in view of the fact that by the order of 20th October, 1904, the duty is placed on the First Sea Lord of the Admiralty to advise on all large questions of naval policy and maritime warfare, and that by the same order the First Sea Lord is always to be consulted in any matter of importance by the other sea lords, the Civil Lord, and the Parliamentary or Permanent Secretary, did the First Sea Lord in fact advise and was he consulted upon the conventions signed at The Hague in October, 1907, and ratified in November, 1909, either before their signature or before their ratification; and was he also consulted and did he advise on the Declaration of London before its signature in February, 1909.

Mr. McKENNA. The conventions signed at The Hague in 1907 were submitted to the First Sea Lord in the ordinary official course, and a similar procedure was followed in the case of the Declaration of London.

Mr. LEE. May I ask whether the First Sea Lord advised that the Declaration of London should be ratified?

Mr. McKENNA. Yes, my recollection is that we discussed it very frequently, and he did advise so, but I think the honorable gentleman will agree it is most undesirable to raise questions as to the opinions of particular members of the board.

Mr. LEE. But the First Sea Lord has given his particular opinions on another great question.

Mr. BUTCHER. Might I ask the right honorable gentleman whether the Board of Admiralty was consulted as to the Declaration of London before it was signed?

Mr. McKENNA. Yes, sir; the Board of Admiralty decided in support of the Declaration of London, and it has been stated so repeatedly.

Mr. BUTCHER. Was the First Sea Lord asked to give his opinion?

Mr. McKENNA. Yes, sir—

Mr. SPEAKER. That does not arise out of the question on the paper.

Mr. Eyres-Monsell asked whether, in the event of the Declaration of London being ratified, a new edition of the Naval Prize Manual is being prepared; and, if so, who is preparing it.

Mr. McKENNA. The revision of the Prize Manual was provisionally considered by a departmental committee in 1909, but in the event of the Declaration of London being ratified, the question will be again taken into consideration.

Major Archer-Shee¹ asked why the Admiralty propose to employ steam trawlers for mine-sweeping purposes in time of war when, under article 3 of the convention on the restriction of the right of capture, ratified on 27th November, 1909, contracting powers are not allowed to take advantage of the harmless character of such vessels nor use them for military purposes while preserving their peaceful appearance.

Mr. McKENNA. The arrangement under which these vessels will be employed in the event of war will not be a contravention of the convention referred to. While employed as mine-sweepers these trawlers will cease entirely to be fishing craft. Trawlers, being deep sea fishing vessels, are not exempt from capture under the article quoted.

MAJOR ARCHER-SHEE. Is it not almost impossible to make a trawler look like a torpedo-boat, which is the only war vessel of anything like the same size?

Mr. McKENNA. I can not add anything to the answer I have given the honorable and gallant gentleman.

Major Archer-Shee asked (1) whether, in conformity with article 1 of the convention on the right of capture, ratified on 27th November, 1909, captains of His Majesty's ships at present serving on foreign stations have been instructed that in the event of war being declared by or against the United Kingdom they are not to open official correspondence found on captured enemy ships, but to forward it with the least possible delay to the enemy Government; and (2) whether captains of His Majesty's ships at present serving on foreign stations have been instructed that in the event of war being declared neutral mail ships are not to be searched except when absolutely necessary, and then only with as much consideration as possible.

¹ Unionist.

Mr. McKENNA. These questions raise points which will be dealt with in the revised Naval Prize Manual, which will have to be issued when the convention for the establishment of the international prize court has been ratified. It is not considered desirable to make any statement as to the actual instructions which will be given to captains of His Majesty's ships, the Manual being regarded as for His Majesty's officers only.

MAJOR ARCHER-SHEE. Is it not the fact that the Battle of Trafalgar would never have been fought but for intercepted dispatches, and consequently this convention will not be worth the paper it is written on?

Mr. SPEAKER. That is a matter of argument.

Major Archer-Shee asked whether, under article 3 of the convention for restriction of the right of capture, ratified on 27th November, 1909, which exempts small boats employed in local trade from capture, the expression "small boats" covers coasting steamers and barges; and up to what limit of tonnage vessels may be regarded as small boats under this article.

Mr. McKENNA. I can not do more than refer the honorable member to the protocols of the plenary meetings of the second peace conference, as contained in Command Paper 4081, Miscellaneous, No. 4 of 1908, article 1 on pages 220 and 221.

Major Archer-Shee asked the Secretary of State for Foreign Affairs whether article 6 of the convention on the restrictions on the right of capture, ratified on 27th November, 1909, which enacts that the captain and crew of an enemy merchant ship were not to be made prisoners of war if they undertake in writing not to engage, while hostilities last, in any service connected with the operations of war, means that they were at liberty to ship on board another enemy merchant ship.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The answer is in the affirmative, provided that the enemy merchant ship is not herself employed in service connected with operations of war.

Major Archer-Shee asked whether article 7 of the convention on restrictions of the right of capture, ratified on 27th November, 1909, which states that the belligerent is forbidden knowingly to employ these persons after they have given their parole, means that they must not be employed by the naval or military authorities only, or whether it means that they must not be employed by the subjects of the enemy State.

Mr. McKINNON WOOD. It means they must not be employed by the belligerent State in any capacity.

MAJOR ARCHER-SHEE. Does that include subjects of the enemy's State?

Mr. McKINNON WOOD. It means they must not be employed by a belligerent State in any capacity. It is a question of State employment.

NAVAL PRIZE BILL (ELEVEN O'CLOCK RULE).¹

Mr. Hunt asked the Prime Minister whether he will propose the suspension of the 11 o'clock rule on Thursday, 29th June, so that members may have a chance of expressing their views on the Declaration of London.

The PRIME MINISTER. I see no sufficient reason for suspending the rule.

Mr. HUNT. May we not fairly conclude that the Government refuses to allow a full discussion on a matter concerning the food of the people and also the question of starvation in war?

The PRIME MINISTER. The honorable member may draw any conclusion he likes, but it will not be a rational conclusion.

Mr. MEYSEY-THOMPSON.² Will the right honorable gentleman give us another day for discussion?

Mr. HUNT. Is not the conclusion that I come to the conclusion of the whole of the naval and almost all mercantile people?

NAVAL PRIZE BILL.³

Declaration of London.

Order for second reading read.

Motion made and question proposed.

"That this bill be now read a second time."

The UNDER SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). In rising to move the second reading of this bill I may point out to the House that part of the bill is a consolidation of prize practice and is similar to the draft which was prepared about seven years ago. That part of the bill is non-controversial, and I do not suppose that any point will arise upon it except possibly in the committee stage. The important part of the bill is that which deals with the necessary alteration of prize practice in view of the establishment of an international prize court of appeal. The House is aware that the Government consider that the questions of the establishment of an international prize court and the provision of rules under the Declaration of London are closely connected questions, and therefore some months ago the Government promised that on the second reading of the bill full opportunity should be given to the House for the discussion of these two important international agreements. I do not think that the severest critic of the Govern-

¹ 27 H. C. Deb., 5 s., 423.

² Conservative.

³ 27 H. C. Deb., 5 s., 434.

ment will raise the question that sufficient time has not been given for the discussion of this matter. There has been the fullest and most vigorous discussion. I suppose no international instrument has ever been discussed in the same way. We have had discussion which has been both legitimate and illegitimate. I am not an admirer of the exhibition of picture posters as a method of controversy in many cases, but I think the House will agree that it never was resorted to with more ludicrous inappropriateness than in dealing with a question of international law. The delay that has taken place has been, of course, increased by the desire which was expressed that this matter should be considered by the imperial conference before a decision was taken by the House. When the Commonwealth of Australia expressed a desire that this matter should be discussed at the imperial conference, together with the larger question of the desirability of consulting the dominions in matters of international agreement which affect any of them, the Government immediately acceded to the request. On the broad general question, as the House is aware, the statement of my right honorable friend the Secretary of State for Foreign Affairs entirely satisfied the representatives of the dominions. On the special question of these agreements the discussion was extremely interesting and valuable, not merely because it resulted in a resolution in favor of ratification but because it showed that the question had been critically weighed by the dominion statesmen, and that they had come to this country prepared to deliver well-considered opinions upon it. The representatives of New Zealand regarded these agreements as a great advance in international law. Sir Joseph Ward said:

There has been on the part of those opposed to the Declaration a strong and persistent effort made to influence the opinions and judgment of the representatives of the overseas dominions attending this conference, and after weighing the opinions of those whose opinion is considered worthy of respect, and examining the matter carefully for myself, I have arrived at the conclusion that the Declaration of London now before us is better in the general interests of the British Empire, either as a neutral or as a belligerent, than the conditions existing at present.

And the other representative of New Zealand, a man extremely well qualified to speak on this subject, a trained international lawyer, Sir John Findlay, who had considered the matter in New Zealand, and delivered a very weighty and important speech in favor of the Declaration in New Zealand before he came to this country, after dealing with the details of the Declaration, came to the conclusion that in every respect the Declaration of London was one of the best things that had been done for British commerce for very many years. The Prime Ministers of Canada approved of these agreements themselves, and welcomed them as a step forward in international agreement, in which Canada has a great and special interest. The Prime

Minister of Newfoundland was also strongly in favor of the agreements. The Prime Minister of the Union of South Africa looked at the matter especially from the point of view of that dominion, and pointed out how these agreements would improve the position of that dominion in the event of war by allowing the free importation of food and, indeed, everything but conditional contraband, in neutral vessels through neutral ports, and he pointed out that this great benefit to South Africa was due to the abandonment of the doctrine of continuous voyage as applied to conditional contraband. The Prime Minister of Australia, while abstaining from voting, expressed a clear and decided opinion on general grounds that the convention establishing the international convention and the Declaration of London ought to be ratified. So there was no dissentient at the imperial conference from the opinion that these agreements ought to be ratified.

I think the House is well aware that the opponents of the Declaration have no ground for reproaching themselves for having omitted any opportunity, public or private, of pressing their views before the dominion representatives. Therefore, we find that after the fullest consideration not only the British Government, but the Governments of the self-governing dominions, are of opinion that it is desirable that this agreement should be ratified. It is not very long since we were urged to take the opinion of the dominions. That was the great cry of the opponents of the Declaration. Now, after reading recent manifestoes and speeches on the question and after reading the speech delivered yesterday, what do we find? We find a consensus of silence on the subject of the dominions. Were we only urged to listen to them when it was hoped that their views would be adverse? Are their opinions to be ignored when they are found to be favorable? That is not very respectful to our great dominions. The worst thing I think that could happen to this country and this empire would be if we got into the habit of treating our dominions as pawns in a party game. I gather from the amendments of which notice has been given and the speeches which were delivered yesterday that the idea is that this matter should be referred to a royal commission. One honorable member has suggested that there should be a committee of admirals and business men, with a few international lawyers as assessors. An admirable idea!

I should be the last man in the Government to throw a slight upon business men. [An honorable member: "Not on admirals, I hope."] Well, I never knew a subject upon which admirals were agreed. I should be the last man to throw a slight upon business men, but I think that they must feel that it is the grossest flattery to regard them as experts in international law. I think they will hardly re-

gard that as a compliment even when it comes from the honorable and learned member for York (Mr. Butcher). No, I think that the proposal of a royal commission or a committee is the very worst possible way that could be conceived of dealing with international questions like this. How would such action appear in the eyes of other nations? It is legitimate in domestic affairs in the case of a measure you want to get rid of to refer it to the lethal chamber of a royal commission. It might not do any particular harm in that case. But in international agreements I want to know if it is a policy that will commend itself to the serious judgment of right honorable gentlemen opposite? It is an entirely novel precedent. Is it one which they will take the responsibility of approving? It is a very serious thing to bring discredit on the British Government in regard to international agreements. The effects remain after the particular administration has passed away. The injury is not to a Liberal administration: it is to the British Government. What is the commission to consider? (1) The decisions of an international conference summoned by the British Government to meet in London, and (2) the desirability of establishing an international prize court proposed by the British Government and never dissented from until lately by the opposition?

At the naval conference we chose our experts, who very ably represented us. Lord Desart, a very eminent British jurist, was the chairman. Questions were asked in this House as if the Admiralty had never been consulted. Whom did we appoint as representatives of the Admiralty? The Secretary of the Defense Committee who had been Director of Naval Intelligence; Admiral Sir C. Ottley, and the Director of Naval Intelligence, Admiral Sir E. Slade, represented the Admiralty. If the Secretary of the Defence Committee and the Director of Naval Intelligence are not acquainted with the views of the Admiralty, I wonder who is acquainted with them. The representatives of the Foreign Office were Mr. Hurst and Sir Eyre Crowe. At our invitation the foreign powers sent their representatives. After prolonged discussion, in which were displayed reasonableness and good will, agreement was arrived on many points on which there had been great divergence of view. Now we are invited to throw the whole thing over and appoint a royal commission. What sort of a reply is a future British Government, whether Conservative or Liberal, to expect to receive when next it wishes to call a conference or when next it wishes to submit any important proposal to the conference at The Hague? Do you not think that the other nations would say, "We prefer not to waste our time. You did not know your own minds when you called the last conference. Have you had your royal commission? Do not you think you had better have it first?" [Honorable members: "Hear, hear."] I thought I should get

these cheers, but I will ask right honorable gentlemen who have been responsible for the Government whether before an international conference is summoned they will find it a convenient thing to have a royal commission sitting in public, tying our hands in every detail? Is that the way right honorable gentlemen, who have had anything to do with the conduct of foreign affairs, will proceed when it is desired to have an international agreement? I do not think so. I think other nations would say something still harsher if such a proposal were carried. They would say that Britain's idea of an international agreement was a code which she herself drew up without consulting anybody else.

In these agreements we took the initiative. We are doubly interested as the greatest naval power, and as the greatest maritime power carrying half the oversea commerce of the world. I wish to remind the House of the immediate historical causes which led to these proposals, because they are very relevant, they are extremely important and they are often overlooked. The experience of recent wars has impressed upon the British Government the fact that in naval matters international law is in a state of complete uncertainty and chaos. There was no international law, there was no agreement, and there was endless divergence of opinion, and from that state of affairs we were the principal sufferers. The events of the Russo-Japanese War revealed the fact that there was great danger and inconvenience to British commerce arising from the uncertainty of international law, and it also revealed the inadequacy of the means of obtaining redress, short of force. The Unionist Government was in power at that time; I do not mention the fact with a view to any criticism. They did not resort to force, or threaten force, and they probably were perfectly right and were considering the larger interests of the country. I think there were five British ships, two German ships, and one Danish ship destroyed by the Russian fleet. I believe there are members in the House now who were interested in those ships. They were the *Knight Commander*, *Ikhona*, *Oldhamia*, *St. Kilda*, and *Hipsang*. With regard to Japan we had not such serious ground of complaint, but in regard to food the decisions of the Japanese courts were not in accordance with our view. In the case of the *Pehping*, carrying rice to Newchang, the prize courts condemned her cargo on the ground that there were Russian troops there who could eat rice, although there was no presumption that the rice was going to any but the peaceful natives of the place. The case of the *Hsiping* was very similar. The right honorable gentleman the leader of the opposition remembers, as do others, that there was an enormous outcry at the sinking of British ships by the Russians. Both he and Lord Lansdowne, who was then Secretary of State for For-

eign Affairs, were beset by people seeking interviews, and deputations of the most important chambers of commerce and shipping and underwriting associations were received. The underwriters had an enormous interest in this question, seeing that they insured foreign as well as British goods and ships. They pointed out that while they were not concerned in the war they were having to run undefined war risks. What was to happen to them was a thing they could not find out. They had to depend on the views of a foreign belligerent State. They pointed out that trade with Japan was paralyzed, and that it was necessary to get a further definition of what was contraband. Lord Lansdowne listened to them with sympathy, and he said that it was essential that we should have a clearer definition of what is contraband. He used the word "essential." But he added that he could not go into this question while the war was actually in progress. That was cold comfort for them. The British Government protested, but what remedy was that for the British shipowner, the underwriter, or the exporter? He could plead his case in a Russian prize court. The prize courts of Russia gave decisions, not according to British doctrines, but according to the regulations of the Russian Admiralty. If dissatisfied with the decision, the parties could appeal to another prize court in Russia, also administered according to the regulations of the Russian Admiralty. It seems to be forgotten that whenever we are neutral and other nations are at war, our cases are judged by the prize courts of the belligerents. Some of these cases are not settled yet.

There came an opportunity of dealing with this matter in a time of peace, which Lord Lansdowne suggested was the proper time, when the second peace conference met in 1907. The Government then proposed to give neutrals the power of appealing from the prize courts of the belligerents to an international prize court, and the nations represented agreed to that proposal. It arose, not out of theory, but out of a grave practical difficulty, as a remedy for serious evils which now seem to be forgotten, or at least ignored by most of our critics. But when we came to discuss the matter at The Hague, the discussion showed more clearly than ever the extraordinary vagueness and uncertainty of international law. There was grave divergence of views between the great powers—it was evident that doctrines were held which would probably in the future, as in the past, be extremely damaging to us. That showed that it was mere foolishness to argue as critics do now—it is the basis of argument of most of the chambers of commerce—that our commerce is now protected by some excellent doctrines of British jurists which are repudiated by other powers.

The Government were not prepared to submit the interests of Great Britain or its commerce to the uncertain interpretation of international law. They felt that the establishment of a court of appeal would not meet with general acceptance so long as vagueness and uncertainty existed as to the principle which the court would apply. Therefore, the naval conference of London was called. What was the avowed object of the naval conference? It was to arrive at an agreement as to what are the general and recognized principles of international law; to get an agreed statement of existing international law. That was the object of the conference, and was well worth doing. I think we did more, and that we got an improvement of the existing practice. The leading naval powers, before the meeting of this conference, sent in memoranda explaining their views. Some stated what they considered to be the existing international law, and some what they proposed should be the international law decided by the conference. You can not read these memoranda without again recognizing the immense divergency of opinion which existed. There was hardly a point on which every nation was agreed; and on some points there were nearly as many opinions as there was nations.

I should like to say a few words as to the difficulties which have arisen in discussing this question. The first difficulty that has arisen is the persistent ignoring of the essential factors of the problem. There is the practice of foreign countries in the first place. This is a matter of the greatest importance, because until we have an international court of appeal and agreed rules, we have to fight our cases in the prize courts of the belligerent who has done the injury; and, again, when belligerents, we may be hampered by the view of some other power. The second difficulty arises from the very nature of the subject. It would arise if we had a royal commission, whose report on the Declaration would have to be weighed and considered from different points of view. It is very easy now to say that this provision could be very much improved to safeguard British trade. You have got to ask yourselves another question, How would that improvement affect our position as belligerents? We have interests of a neutral character, enormous interests, because we carry goods all over the world, foreign as well as British goods, and because we insure foreign as well as British property. We are interested as belligerents in the right of captors to stop the carriage of contraband to the enemy. On the other hand, we have a great interest in the free access of neutrals to our shores. Our interests are so many sided that we can not afford to take a one-sided view.

I would venture to impress this consideration upon the House. If you had your royal commission or your committee of admirals and

business men, or any other tribunal, and if you were considering this question from the point of view of Great Britain alone, and if you were paying no attention to the doctrines and wishes of other countries, but, of course, bearing in mind that every licence you assumed you must give to other nations and every restriction you put on other nations you must observe yourself, if you were trying to draw a code without regard to anybody else you would have so to weigh and balance each article that I think you would find that your code would be open to most of the criticisms that are directed against the Declaration of London, and to all the criticisms that come from critics who look at this matter from a single point of view. Of course, the House will recognize that the tasks of our delegates and the British Government who instructed them and are responsible was a much more difficult one. They had to obtain agreement amid divergent views. You can not judge this matter fairly without taking a broad and balanced view of the Declaration of London as a whole. The real question is, Are these agreements an improvement upon the present position? Do we gain or lose by them? Yet I constantly find critics who attack us in the same document (1) because we have not secured absolute immunity for our own commerce, and (2), because we have not secured an absolutely free hand to deal with other people's commerce. Really, I think that describes some of the speeches we have heard. Many critics have just wakened up to the fact that a war would entail consequences highly inconvenient to other people besides sailors and soldiers, and that the ordinary routine of oversea commerce would not proceed without some special risks. They say "such and such a highly inconvenient thing would happen under the Declaration of London; do not ratify it." But they ignore the fact that the same highly inconvenient thing, or perhaps a much more inconvenient thing, might happen without the Declaration.

I will give the House an example. Business men have come to us and said, "In our business, as you know, the goods are conditional contraband, and you are aware that the practice is to bring cargoes of grain and a great many other things to ports of call, and the ship carries no papers that would show her ultimate destination." They say: "Is that safe under the Declaration of London?" The answer is "No," and it would not be safe without the Declaration of London. You can not carry on commerce in time of war with the same comfort and safety as in time of peace. I do not claim that the Declaration of London will make a time of war like a time of peace, but I think that it will remove many uncertainties and great difficulties which now hamper commerce.

One of the most familiar arguments, and one which every member of the House must have heard, is that under the Declaration of Lon-

don continental powers can bring in food by land, at greater cost but safely, and that we can only do so by sea. Monstrous that we should be at such a disadvantage! As if the Declaration of London had created the geographical facts. You cannot by any naval agreement, or by any naval force, if you refuse all agreements, prevent a continental power from bringing in food and everything else over her land frontier. I venture respectfully to agree with the right honorable gentleman the leader of the opposition in what he said about the advantages of being an island and the disadvantages of being an island and especially with his observation that you cannot alter that fact for good or evil by any agreement.

One of the favourite arguments used by more ingenious people in this controversy is one which I confess I have the very greatest difficulty in following. It is that by establishing an international court and agreeing to fixed rules we have given up any advantage which might have arisen in some not very clearly explained way from the protests of neutrals against the action of belligerents. As the Marquess of Salisbury said in another place:

As a matter of fact a belligerent would be effectively controlled by the public opinion of the neutral powers.

I do not admit that. I do not think that experience shows anything of the kind. I can not understand why, if this were so, we should be pleased, we of all nations in the world. I must insist we have to consider our position as belligerents. We all expect, with the utmost confidence, if we are engaged in war, that we shall be the power which will carry on the most extensive naval operations, and effect probably by far the largest number of captures. Why in the world we should desire effective control by neutral powers, as the Marquess of Salisbury appeared to desire, I altogether fail to see. It is one of the advantages which I claim for the Declaration of London that when we are at war we shall not after the Declaration of London be constantly hampered by protests of neutral powers which take a different view from ourselves as to the rights of a belligerent—it may be in regard to blockade, that is a very likely case to arise under present circumstances; it may be in regard to the doctrine of continuous voyage, which is a subject on which trouble has already arisen. I think that it should be rather a matter of congratulation that in future our naval commanders will be able to do their duty, knowing clearly what their rights are, and what they can do without interfering with the recognized rights of neutrals. I say that is to the good in saving us from friction with neutrals which might hamper us in time of war.

The importance of this point of view has been put with much cogency in an article in *Brassey's Annual*, by Sir Cyprian Bridge,

who is a man who has held important commands as an admiral, and who was Director of Naval Intelligence. He points out clearly that there is great advantage in this to naval officers.

But I notice this argument is relied on by the noble marquis, by Lord Selborne and others as a security to us in regard to our food supply. They think that the protests of neutrals would prevent the enemy from acting harshly, but the fact is that in the pre-Declaration view of some of the most powerful nations it is not improper to treat foodstuffs as contraband. Those nations are not likely to protest. What are those nations? They are Germany, France, Russia, and Austria. There are other nations who are considerable carriers which have not sufficient naval strength to protest efficiently, and experience shows that even a strong naval power is not at all likely to go to war on account of the damage done to two or three of her ships because the risk and cost of war would be altogether out of proportion to any damage that would have been caused. To trust to the intervention of neutrals for the safety of our food supply is to trust to the feeblest of all conceivable securities. On the other hand it seems to me that the intervention by neutrals to prevent harsh and arbitrary action by belligerents would be more effective and much more likely to be exercised under the Declaration of London. Without it the neutral powers can only base their protests on the vagueness of international law, but it will in future be a much more serious thing for belligerents to break the solemn engagements of an agreement into which they have entered with neutrals. In the event of any flagrant breach I think we may reasonably expect a protest from a combination of neutrals which would be most effective. Altogether I think that that argument is one of the weakest which has been brought against the Declaration of London.

This agreement is attacked from two very opposite points of view, and there are two strongly opposed schools. There are those who think that the rules will not sufficiently protect neutrals. There are influential members on both sides who wish to see all private property at sea immune from capture. To them I say that was impossible of attainment. There is no international agreement on the subject. We are not even agreed ourselves, but the establishment of an international court and these rules are a step forward. They give greater certainty and security to neutrals, where as before there was the greatest uncertainty. If we accept these agreements there is nothing to prevent our trying to obtain improvements in future conferences. If we reject them we shall not only give up what we have secured but have struck a deadly blow at the whole principle of agreement. Undoubtedly our sternest opponents are those who object not to these agreements but to all agreements, the people who regard the Declaration of Paris as one of the gravest blunders this

country ever made. I was talking to a naval officer the other day and he said, "It is not your Declaration of London I so much object to, I do not object to that, I do not think it will do any harm, but it is the Declaration of Paris which I dislike." Their ideal is that we should be free to act as we did a century ago in the French war. They forget what our interference with neutral trade then cost us—world-wide hostility and an extension of the field of war. Even then we could not maintain the license we assumed. They do not recognise how impossible it would be to assume that license now with the general development of naval power and the vast extension of sea-borne commerce. I need not argue that point, but I pass on rapidly with I think sufficient reason, as the matter has been discussed in this House and in another place for three days and in the imperial conference, and not a single responsible statesman has given any countenance to the idea that we ought to free ourselves from the Declaration of Paris. I am, however, entitled to point out how much of the opposition is based upon the dislike of any international agreement in this matter.

A much more moderate and reasonable view is that in gaining an advantage for neutrals and for our own commerce when we are neutrals, however great that may be in itself, it ought not to be purchased by giving up rights which are necessary to us as belligerents. That is the view put forcibly by the right honorable gentleman the member for East Worcestershire (Mr. Austen Chamberlain) in the previous debate. I think that is a fair criterion. I submit that the Declaration of London is not open to that objection. It in no way weakens us in the exercise of our naval power as belligerents, but on the contrary it removes some difficulties which might have hampered the exercise of that power. I notice our critics are not agreed on this matter. The right honorable gentleman the leader of the opposition said yesterday that blockade has not lost its power, though it was less powerful than in days gone by, and that we had given up something, though he did not explain what, in regard to it. I see that the honorable and gallant member for Evesham (Mr. Eyres-Monsell) has written a pamphlet, in which he says that our views on the subject of blockade were accepted practically *en bloc* by the conference, but on the other hand he says that blockade is no use now. I think both those two critics of ours are partly right and partly wrong. Our views on blockade were practically accepted *en bloc* as the honorable member for Evesham says, but blockade is still of value, as the right honorable gentleman says, and that view is supported by the Admiralty. Let us see what the position is in regard to blockade. The right honorable gentleman has introduced a new note into the controversy by suggesting that we have weakened our power of blockade. We had supposed before that we had in-

creased our efficiency in blockade, as the honorable member for Evesham apparently thought. What happened? There were two continental doctrines that might have been very hampering in time of war. One of the doctrines, of which France was the principal exponent, was that you must give individual notification to each ship. In other words, although you had given a general notification of the blockade, each ship had a chance to try and run the blockade, just like the case of giving a dog a first bite. If you caught the ship then you notified that there was a blockade, and the captain said, "Oh, thank you," and went away. Obviously, that is a very serious diminution of the efficiency of blockade. Now we have our view established on that. Then there was the other continental doctrine that a ship must actually have passed some imaginary line between two blockading ships. We pointed out that that was impossible and impracticable, and we have got rid of that. What in our practice has been altered? Have we made any concessions? Yes. Theoretically a blockade runner could be stopped before she had actually tried to slip the blockading squadron. Lord Desart and Mr. Arthur Cohen have examined all the prize cases, and they say that there is no instance that they can find of a vessel being seized before she had reached the area of blockade. Therefore we have not given up anything of practical value. A ship must have entered the area of blockade, and we must catch the blockade runner by the continuous pursuit of a vessel of the blockading force. As Mr. Arthur Cohen has pointed out very fairly, if we can not catch the vessel the blockade is not efficient, as it is required to be by the Declaration of Paris. Therefore on the question of blockade there is not the slightest doubt that we have established the British rule for all practical and important objects. I am fairly familiar with this controversy, but I must say that, apart from a good deal of declamation from those who object equally to the Declaration of Paris and the Declaration of London, there has been no serious argued attempt to show that we have given up anything which would weaken our naval efficiency.

We are told that we have introduced a new danger by having made our food supply less secure. We have all seen the sensational headings "Starvation in war," the foolish posters about a ship being sunk, as if that could not be done now, and the lurid word pictures which are drawn to waken public alarm. Some speeches are made up of nothing but statements about the danger to our food supply that would arise in time of war. Yes; but why do not the speakers tell their ignorant audiences that this danger exists at this present moment? The whole argument rests on the simple device of absolutely ignoring present conditions, and concealing from the public the fact that every one of the dangers they mention is a danger that we are facing now. Let us look at the question as practical peo-

ple. Let us start with the bulk of the food supply. I can not tell from official figures exactly what proportions of our food supply is brought in neutral and in British bottoms, but the representatives of the corn trade of the country informed us that they believed that in the case of grain the proportion brought in in neutral vessels was something like 10 per cent. I think the phrase they used was that they thought that not less than 10 per cent was brought in neutral vessels. There are many other kinds of food which come to this country. I suppose that practically all the chilled meat would come in in British ships. At any rate, I do not suppose that one is under-estimating it if one takes the figure of 10 per cent. But I will not base any argument on the figure. My point is that it is the smaller part, and much the smaller part, of the supply. The representatives of the grain trade told us that they thought that proportion would be largely increased in time of war, but that still it would remain much the smaller proportion of our supply. On the other hand, Admiral Sir Cyprian Bridge gives reasons for thinking that we should have to depend more on British ships and less on neutrals in time of war. But I will not go into that argument; my whole point is that we should have to depend for the bulk of our supply in time of war on British ships. We can not depend upon neutrals. I am not here on behalf of the Government to ask you to depend upon agreements, however much they might safeguard neutrals. We must depend upon the protection of our strong navy. We are not, as some people would have you believe, offering the Declaration of London as a substitute for the navy. I think this consideration, that the bulk of our food supply comes in British ships, and that the position of British ships will be exactly the same after the Declaration of London as it was before, neither better nor worse, places the matter in a fairer perspective. It disposes of much wild talk. What becomes of all the perorations and declamation when it turns out that you are forgetting 80 per cent or 90 per cent of the supply?

Now, let me deal with the smaller portion of our supply, which comes in neutral ships. My contention is that the Declaration of London does not injure us, but improves our position. I am talking of the time when we are a belligerent. I have dealt with the bulk of our supply, which must come in in British ships, and is not affected by the Declaration of London. Now I will deal with the smaller portion of our supply, which will come in neutral ships. I say that the Declaration of London does not injure us, but improves our position. We constantly find people arguing under the strange delusion that under existing conditions food would come unhindered to our shores, and that in a fit of lunacy the British Government under the Declaration of London allowed it for the first time to be made contraband.

We have had many protests from chambers of commerce based on this statement, that under the law of nations food can only be declared contraband if destined for the armed forces of the enemy, and that all nations have hitherto been agreed upon this point. Take the Chamber of Commerce of London. They base their argument upon this extraordinary statement:

that the effect of the Declaration is to alter the law of nations as hitherto maintained in a manner entirely unprecedented, and to expose to capture or deliberate destruction food supplies borne to any port of Great Britain in neutral vessels.

In other words, that the Declaration of London has created the risk of having food seized. Can there be a more outrageous proposition? Can you conceive a statement more absolutely misleading? The Declaration of London creates no new risk; it lessens existing risks.

My general proposition, which I intend to prove, is that if we refuse to ratify the Declaration of London, we run the risk of having food supplies declared absolute contraband. If we went to war with either of several great powers, the probability is that they would declare food contraband of war. There is nothing in their expressed views on international law that would stand in their way. If the Declaration of London falls through, Russia, France, and Germany are all left free by their declared view of international law to notify food as contraband. The honourable and learned member for York (Mr. Butcher), in one of the many pamphlets that we have received, has described my statement that we are better off as "a piece of official recklessness." I do not object at all to the phrase. The House will judge when I have concluded my argument. But I would like to point out a case of historical recklessness on the part of the honourable and learned member himself. In his pamphlet he says, that—food supplies when carried on neutral vessels have not in modern times been treated as liable to capture unless proved to be destined for the armed forces of the enemy.

Could there be a more reckless statement? The curious thing is that the honourable and learned member makes that statement on the very page on which he quotes a case which shows how erroneous it is. In 1885 France declared rice contraband to all ports north of Canton. A White Paper recently republished gives the correspondence, and honourable members have had an opportunity of informing themselves on the point. How does the honourable learned member deal with the case? With much ingenuity. He says:

Great Britain strongly protested. The war was shortly afterwards terminated, and in no single case did France exercise her alleged rights.

No; the notification was quite effective. Shipments of rice were stopped, and no doubt the notification contributed to bring the war

to a sudden conclusion. We have records in the Foreign office of a case where a British ship actually loaded up several thousand bags of rice, but took them out in consequence of this notification of France. France maintained her policy to the end of the war, in spite of most energetic protests from Lord Granville. More than that, she maintained her view as to her right to declare food contraband up to the meeting of the conference in 1908. What position did France take up? That she was entitled to declare rice contraband, whether it was going to the peaceful population or to the army of China, on the broad ground that it was the best way to put pressure upon China and finish the war. M. Waddington wrote to Lord Granville these words:

The importance of rice in the feeding of the Chinese population and army does not allow my Government to authorize its transport in the north of China without the risk of depriving themselves of one of the most powerful means of coercion they have at their disposal.

It was on that very ground that the opinion of Prince Bismarck was based. I have here an extract from the *Norddeutsche Allgemeine Zeitung*, of 8th April, 1885, which I will read to the House:

The Kiel Chamber of Commerce have received the following answer from the Imperial Chancellor with reference to their communication regarding the treatment of rice as contraband of war on the Chinese coast:

"In answer to their representations of the 1st inst., I reply to the chamber of commerce that any disadvantage our commercial and carrying interests may suffer by the treatment of rice as contraband of war, does not justify our opposing a measure which it has been thought fit to take in carrying on a foreign war. Every war is a calamity, which entails evil consequences not only on the combatants but also on neutrals. These evils may easily be increased by the interference of a neutral power with the way in which a third carries on the war, to the disadvantage of the subjects of the interfering power, and by this means German commerce might be weighted with far heavier losses than a transitory prohibition of the rice trade in Chinese waters. The measure in question has for its object the shortening of the war by increasing the difficulties of the enemy, and is a justifiable step in war if impartially enforced against all neutral ships.

"The Imperial Chancellor.

"V. BISMARCK."

These two historical facts, which do not stand alone, have rather disconcerted the critics of the Declaration. They feel that these facts really dispose of their case on this point, which is their main attack on the Declaration. They have, therefore, tried to minimise them in two ways. They have shown a considerable amount of ingenuity in trying to explain away the inconvenient facts. They ask—I have been asked in this House—whether M. Waddington did not argue with Lord Granville that the justification for stopping this rice was that tribute was paid in rice, and that rice was the pay of the soldiery.

Yes. M. Waddington, in the course of the controversy, used many arguments, one of which was that they were only doing what we had done ourselves when we were at war with France. Another argument was that about tribute and the pay of the soldiery—a very inconclusive argument. M. Waddington could not pretend that all the rice they stopped could be characterised in that way. But after all let us look at something much more important than the mere arguments between two Foreign Secretaries engaged in controversy.

Let us look at the instructions given by M. Waddington to the ambassadors and ministers of France at all the courts. His justification of the notification that rice was contraband was on the broad ground that it was the best way of putting pressure upon China to bring the war to a close. What is more important is that France maintained that view up to 1908. At the proceedings of the naval conference France handed in a statement which is there on record which shows actually that she did maintain that view. What was her proposal about food? We run no risk of having food declared contraband! What did France say? "Foodstuffs and raw materials intended for noncombatants are not in principle considered as contraband of war." That was the pious opinion. What was the practical conclusion: "But may be declared such according to circumstances of which the Government is to judge, and in virtue of an order issued by it." Am I not, therefore, fully justified in saying that the view of France up to the time of the naval conference was that she was entitled to declare food contraband and to have it seized if it was to her interest to do so, and that she was to be the judge of the propriety of doing so. And, replying to my honorable friend below the gangway who interrupted me—am I not justified in saying that Germany admitted the propriety of the action of France? I have read the words of Bismarck. Lord Desborough, chairman of the London Chamber of Commerce, who takes a keen and critical interest in this matter, wrote a letter to the Times in which he stated that Prince Bulow afterwards repudiated Prince Bismarck's view. The noble lord very fairly gave the reference to the report on which he relied. I read it with much care. There is not a word in it which confirms what he says. Prince Bulow did not repudiate Prince Bismarck. No, sir. Germany never gave up that view until the meeting of the naval conference. Let me put a point that confirms that. Germany put forward a statement as to what she thought international law might become under the convention. Did she, as the right honorable gentleman the leader of the opposition would have had the city believe yesterday, treat food as something that could never be declared contraband? No; she put certain classes of food in the list of absolute contraband. Preserved provisions which could be used for the troops; they were to be absolute contraband.

I have shown that neither France nor Germany were estopped from declaring food contraband until the Declaration of London was ratified. What about Russia? Russia claimed the same right in the war with Japan, and though in reply to our protests she agreed not to act upon it, she has not given up, and never did give up the principle until she signed the Declaration of London. In fact, like Germany, she put certain classes of food supply useful for the army into the list of absolute contraband. I say that the Declaration of London does this good thing for our food supply; it frees us from the danger, no imaginative danger, of having our food supplies declared absolute contraband. We tried at the peace conference to have food placed on the free list. We could not secure an approach to international agreement. The Declaration of London places it on the list of conditional contraband in accordance with the old-established British doctrine—at any rate our doctrine for a long time now. The articles dealing with that subject have been much discussed, and perhaps I am bound to say a little more about them in detail—I hope the House will bear with me.

Article 33 is the definition of conditional contraband. Nothing can be condemned as conditional contraband that does not come under that definition. That definition expresses the British view. We have never maintained that food was in no circumstances contraband. We have always admitted that food destined for the enemy's army could be so treated. Had we been able to place food on a free list we should have gained an advance not only on the doctrine of foreign nations, but upon our own doctrine. It is absurd to condemn the Declaration of London because we have not been able to secure so much as that.

I should like to point out to those who take the view of the right honorable gentleman the leader of the opposition, that if you do place food on a free list you would only be dealing with a small proportion of the supply. You would not be dealing with such a proportion as to secure ourselves in time of war. Starvation or nonstarvation would not depend upon that proportion. That must depend upon our power to bring food here in British ships.

What is the definition of "conditional contraband"? It is:

"Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a Government department of the enemy's State unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress." Article 34 deals with the circumstances of suspicion when the presumption is that the destination is that described in article 33, namely, that of the armed forces of the enemy, a presumption which may be rebutted. The point I want to make is this: I do

not want to argue with honorable members as to how a naval captain would interpret article 34. What I say is, however he interpreted it—if you take the gross exaggerations of meanings and possibilities of that article which have been put forward—and they are gross enough—it would not expose us to a single new risk to which we are now exposed. There is the interesting manifesto of the Imperial Maritime League, signed by a number of admirals, drawn up to influence the imperial conference. The statement that I find there is that, as all our ports are in railway communication with armed forces, all our ports are bases for armed forces and all ships carrying supplies to these ports would become capturable. I suppose if the navy was at Rosyth and the men were fed with fish from Fraserburgh or Grimsby, then Fraserburgh and Grimsby would become bases? According to this wild statement every port in the world is therefore a base. There is no port that escapes. We are seriously asked to believe that that is what is meant in the Declaration of London, and that that is how an international prize court would interpret it. The clause in the Declaration of London dealing with conditional contraband is solemn humbug! I must say that I think it is much fairer to rely upon the opinion of the Lord Chancellor. I think it is much nearer the probability of what the decision of a prize court would be. He says you could not count any ports except ports which are actually magazines for war, or actually places of equipment for war, as being within the term “base for the armed forces of the enemy.” In the commentary it says they may be “bases of supply.” That does not say that every place connected with a railway would be a base of supply. That is a very different point.

I come now to the doctrine of continuous voyage upon which we have been attacked. What we maintain in relation to the doctrine of continuous voyage is that we have made a very satisfactory gain indeed. There is no general agreement upon this. The doctrine of continuous voyage is in some quarters hardly understood; at any rate there is no agreement upon it. It is a doctrine therefore that has given us, as the right honorable gentleman knows, trouble, and very likely will give us trouble in the future with neutrals. The result of the agreement is very satisfactory. The doctrine is established where it is important, and given up where it is of no practical value. It is agreed in the case of absolute contraband; that is very important to us. In the case of absolute contraband, in the case of war materials, arms and so on, the probability is you can trace the ultimate destination, but in the case of articles like food and clothing, to trace the ultimate destination is perfectly impossible. It is said that we give an advantage to foreign nations who can bring things in by land. Never was there a more ridiculous argument. It is an advantage you can not deprive them of.

The Lord Chancellor has pointed out that we gain a great deal more by giving up this doctrine than any other nation. I will not dwell upon that point—that we shall be able to bring food without risk of the capture of the ships to neutral ports within a few miles of our shores. What does the Imperial Maritime League say about that? That it would be a “transparent evasion.” What tender consciences these admirals have! Their consciences would not be quite so tender in time of war. It is what the Declaration of London contemplates. It is no more evasion for us to bring food from a neighboring harbor into a British port than it is for Germany to bring food by rail from a Dutch port. I think our critics are hard up for arguments. Criticism has been raised upon the word “enemy” in this article. I will not dwell upon that because my right honorable friend has promised to get that matter settled by agreement. Another question has been raised by a number of distinguished lawyers touching the question of the report of the conference. In deference to their views I should like to put to the House exactly how the matter presents itself to the Government. The report of the international naval conference was drawn by M. Renault. It was then revised by a committee of all the powers represented at the conference, and it then became, not M. Renault’s report, but the report of a committee of the conference. Then the conference gave a whole sitting to consider the report and they amended it. It was then accepted by the conference. The president’s declaration was, “This report is accepted by this conference.” What does the report itself say?

We now reach the explanation of the Declaration itself, on which we shall try, by summarizing the reports already approved by the conference, to give an exact and uncontroversial commentary; this, when it has become an official commentary by receiving the approval of the conference—

Which it did—

may serve as a guide to the different authorities—administrative, military, and judicial—who may be called upon to apply it.

The view of the Government, therefore, is that this is the official, authentic commentary, and if there is any ambiguity in the articles naval authorities and prize courts will look to that commentary and see what the intention is. But as we do not think that this is a matter on which there will be any difference of opinion among the nations, I do not apprehend any difficulty in dealing with that point.

I now come to a most important point, never mentioned by the right honorable gentleman yesterday in his speech to the commercial classes, that of the free list. Not only is it a very substantial gain to us when neutrals, but it is even a more important gain when we are belligerents. Hitherto there has been no certainty whatever as to what articles a belligerent would declare contraband. It has been dependent upon caprice. Now, for the first time, the nations have

agreed to place upon a free list articles which can not be declared contraband. These include many of the most important materials of our industries. There is cotton—declared contraband in the past—which as a raw material furnishes employment for an enormous proportion of our industrial population. There is wool, so necessary to Yorkshire, and other raw materials of the textile industries, “and the yarns of the same;” metallic ores, a very important item; rubber, hides, and other articles of that sort; articles required for agriculture; machinery for textile and agricultural operations, and all kinds of machinery not used in war; and many manufactured articles not used in war. The list is much too long to be read, but I would suggest to honorable gentlemen that it is well worth considering. It is a list so important that it amounts to nearly a third of our whole foreign trade. In 1909 it was three hundred millions. It is something between three hundred and four hundred millions now. Nothing shows the irreconcilable manner in which certain critics approach this subject than the scoffing language employed in minimizing the value of this list. The honorable and gallant member for Evesham (Mr. Eyres-Monsell), in a pamphlet called “A Simple Explanation,” says:

We thus safeguarded the importation of goods we could do without.

What do Lancashire and Yorkshire members think of that? We could do very ill without the staple materials upon which millions of our workpeople have to depend. Take, for instance, cotton. The honourable and learned member says we have on an average six months’ supplies of cotton. I do not know what honourable members representing cotton manufacturers’ constituencies have to say to that. It is a very astounding statement. The honourable and learned member has mixed up the exceptional maximum with the normal state of affairs. I attach the very greatest importance to being able to maintain our commerce and to keep our workmen in employment. Those who remember the cotton famine in Lancashire in the time of peace can imagine what a cotton famine would be in a time of war. Here we have secured, as far as it can be secured in neutral vessels, the staple articles of our manufacture.

HONOURABLE MEMBERS. How much comes in neutrals?

MR. MCKINNON WOOD. I can not tell. I have no official figures. I do not want to overstate my case. To maintain our commerce in time of war and to keep our industrial classes in work is a very high belligerent interest.

LORD HUGH CECIL.¹ Will the right honourable gentleman say whether he distinguishes in his argument between neutrals and belligerent bottoms?

¹ Conservative.

MR. MCKINNON WOOD. That is why I put in the remark. I think nothing could be more unfortunate than that the case I am arguing should be put too high. I admit that the free list only deals with goods coming in neutral vessels. I put that in on purpose. I claim, before I leave this part of the subject, that for shippers and underwriters and shipowners and commerce generally this agreement brings unmixed advantage, and that no one shipowner, underwriter, manufacturer, or merchant is injured; they gain by this free list and by the definition of contraband, and by the power of appeal from the belligerent prize court to the international prize court.

I now come to other subjects, and first let me deal with the sinking of neutral prizes. The Declaration of London is condemned because we could not induce other people to prevent the sinking of neutral prizes. We have had a great deal of talk as if the Declaration of London created this situation, but that is only another example of the loose argument by which it is assailed. Have those critics forgotten what happened only seven years ago? Have foreigners never sunk neutrals? Russia sank eight or more. What was the position at the conference? I ask the particular attention of the House to this. The position at the conference was that our view was upheld by two powers, Japan and the Netherlands. The right to sink neutral prizes was upheld by Germany, the United States of America, Austria, Spain, France, Italy, Russia—seven powers. Yet the right honourable gentleman the leader of the opposition stated in the city yesterday that—

The general view of the civilised world, the view of the prize courts of the great maritime nations, the view of America, the view of England has always been violently opposed to this sinking of neutrals and this treatment of corn and foodstuffs destined for a civil population as contraband of war.

We have dealt with food and we have dealt with the sinking of neutrals and with the existing state of international opinion. What possible justification is there for the statement that the Declaration of London has made matters worse? Honourable gentlemen opposite argue that we have made it worse. They in their time had a chance of dealing with this matter. They had provocation, but they did not go to war. They were quite right. But they cannot argue now that they would have gone to war. They cannot argue that the thing would have been stopped by a protest of the great powers. Here we find seven of the great powers approving of the doctrine. We have succeeded in obtaining so many deterrent conditions in connection with the sinking of the neutral prizes that the representatives of the other powers in their reports think there will be very few cases in the future. I should like to quote what our representatives say in their report to the Secretary of State. In their report of what happened at the conference they say—

Mr. BALFOUR.¹ Is that published?

Mr. MCKINNON WOOD. Yes.

The delegates representing the powers most determined in vindicating of the right to destroy neutral prizes, declared that the combination of the rules now adopted respecting destruction and liability of ships, practically amounted in itself to a renunciation of the right in all but a few cases. We did not conceal the fact that this was the object at which we aimed.

Mr. BUTCHER. Is there any record of the view of these delegates in the proceedings which are reported?

Mr. MCKINNON WOOD. Yes, I have taken that statement from the Blue Book.

Mr. BUTCHER. I want to make it clear. This is a statement of the report by our delegates. I want to know is there anything in the record of the proceedings which records the view of these delegates themselves?

Mr. MCKINNON WOOD. There is, of course, the statement of the views they put forward about the sinking of prizes.

SIR ROBERT FINLAY.² Is there anything to that effect in the statements of the foreign delegates themselves?

Mr. MCKINNON WOOD. I cannot say that. But I do not suppose the right honourable gentleman suggests that we are misinformed. I am prepared to take the report of our own delegates. I must say something now about the limitation of the right and the deterrents. First of all I ask the House to remember it is only a ship which in a prize court would be condemned as liable to capture, a ship of which more than half her cargo was contraband, which could be sunk under the special conditions of necessity. Carrying contraband which amounted to less than half the cargo would not render the ship liable to condemnation. Therefore, it is only a vessel that is the legal prize of the captor which can be destroyed and it must be remembered that the captor would be sinking his own property. He would only have to take her into port and reap his reward. And, as

¹ Mr. Balfour began his political career in 1875, when he was returned as a Conservative member for Hertford. Four years later he became private secretary to his uncle, Lord Salisbury. In 1885 he became president of the Local Government Board in the Salisbury ministry. During the following years he made his reputation as a party leader in the debates on the Irish question. In 1891 he became First Lord of the Treasury and the Conservative leader in the House. On the resignation of Lord Salisbury in 1902, Mr. Balfour became the Prime Minister, holding that position until the ministry resigned in 1905. He remained leader of the Opposition, however, through all the parliamentary struggles down to November 8, 1911, when he resigned as the Unionist leader. During this session of Parliament he led the moderate wing of his party, holding, as did Lord Lansdowne, that when the Government rejected all amendments to the Parliament bill the Opposition should bow to the will of the party in power. His influence made his opposition to the naval prize bill an important factor in bringing about its ultimate defeat.

² Sir Robert Finlay, Unionist, entered Parliament in 1885 as the member for Inverness Burghs. Since that time he had not only sat in the House of Commons almost continuously, but he had served as Solicitor General (1895-1900) and Attorney General (1900-1906).

this is so, from the neutral owners' point of view the ship is lost whether she is taken into port or destroyed. Next, the captor must establish the fact that he is only acting in the face of exceptional necessity, or he must pay full compensation, and no examination will be made of the question whether the capture was valid. In the third place, the captor will always have to pay compensation for neutral goods which are not contraband. In the fourth place, the captor must place the crew and passengers in a place of safety, which will generally not be an easy condition. Therefore the Declaration, while not preventing altogether the destruction of ships carrying more than half a cargo of contraband, sets up very strong deterrents and makes destruction a very costly business indeed.

I should like to say a word about the British practice. It was certainly the view of our prize courts that a plea of necessity, however strong, was not an answer to the neutral claim for compensation. But our judges admitted there were cases where sinking was a military necessity. Suppose a neutral carrying a cargo of arms or ammunition or a cargo of coal for the use of enemy's fleet, which was close at hand. I think there is no captain, British or foreign, who would not think it his duty to sink that neutral. It is no use putting war rules higher than can be carried out. That was very well stated by the right honorable gentleman the member for East Worcester. In such a case in the past we should have paid compensation. Other powers would not. In his judgment, in the case of the *Actaeon*, Lord Stowell said:

Lastly, it has been said that Captain Capel could not spare men from his own ship to carry the captured vessel to a British port, and that he could not suffer her to go into Boston, where she would have furnished important information to the Americans. These are circumstances which may have afforded very good reasons for destroying the vessel, and may have made it a very meritorious act in Captain Capel so far as his own Government is concerned, but they furnish no reason why the American owner should be a sufferer.

* * * I think, therefore, he is entitled to receive the fullest compensation.

And he therefore gave compensation. Dr. Lushington also recognized that there was some cases where it might be of very grave importance to the public service of the captor's own State. The position of our judges was that even when destruction was justified by necessity, compensation should be paid to the neutral. Other nations do not admit that obligation. We gave, but did not receive. We were losers by our superior practice. Now we have equality. We are not in a worse, but we are in a stronger position to urge our views in future. As belligerents under these new rules as compared with our own doctrine we gain, but I do not wish to attach too much importance to that. As neutrals under the rules when compared with the doctrine and practice of most other nations, we gain. It is curious to have

this provision attacked by people who attach importance only or chiefly to belligerent rights. I venture to say upon the question of the sinking of neutral prizes that, in view of the strong line taken by so many great powers, and taking into account our interests as belligerents as well as neutrals, this is not an unreasonable compromise, and it makes greatly for the limitation of the practice.

Now, as regards the subject of the conversion of merchantmen on the high seas. The right honorable gentleman the leader of the opposition spoke as if this was an enormous new peril. It is neither enormous nor new. The honorable and learned gentleman the member for York asked me a question on this subject the other day, and I said it was a matter involving such complex argument that it would be impossible to deal with it by a mere question and answer, but I promised to deal with it in this debate. The right of conversion is not one that has ever been questioned. I met an admiral this week who was in command of a British merchantman converted into a warship. As the House knows, the British Government has made provision for exercising that right in the case of certain ships. The only difference between us is that we say it ought to be done in port or in territorial waters and other nations say it may be done upon the high seas. Other nations claim the right because we have many ports and they have few. There is no international law upon the subject, and the right honorable gentleman opposite can not point to any decision of a British prize court on the matter. They can not say it is a new thing. What we were asking for was a new rule. We thought it was in our interest and we pressed for it at the second peace conference and the naval conference. We could not persuade some of the great countries to agree to it; neither Germany, Austria, France, nor Russia would agree to it. We had to report that the attempt at agreement had failed and the matter remained open and all the powers maintained their old opinions.

There was some agreement at the second peace conference on the subject. These converted vessels must be warships and bear the outward sign of warships. They must be immediately placed on the navy list, and they must be commanded by commissioned officers, and must be under naval discipline. The question of conversion on the high seas remains open. It is quite incorrect to say that the Declaration of London legalises conversion on the high seas. It does not deal with it at all. With or without the Declaration the powers claiming the right may exercise it. What justification is there to rave about this as a new risk? We have not succeeded in establishing what we admit is a new rule for which we can point to no international sanction, no decision of our own prize courts. The Declaration of London has nothing to do with this question. But a different point has been raised. Does the creation of an international prize court alter the po-

sition? That was the real point of the honourable and learned member for York's question. Might it not decide against our view? It might and it might not, but surely the most important question after all is our position as belligerents. We shall seize these converted merchantmen whether they are converted in port or upon the high seas just the same, and the prize court will have nothing to say to it. I may be told there will be a larger number of them converted on the high seas. It is quite true there might be, but not a larger number than can be converted at present by the powers that claim the right to convert them. Converting merchantmen is a game we can all play at, and we far better than any other nation. What might happen? A neutral might be seized and the question might be taken to the international prize court. That is the honourable and learned member's point. But a neutral might be seized now and what could we do? Protest—go to war. Go to war for what we can not pretend is an international law at all. This applies to other nations. Other powers who claim the right could not even protest.

Supposing the matter is taken to the international prize court. It has been suggested that the declared understanding that it was an open question might induce the court to decline to adjudicate, and they would not deal with it. I do not rely upon that. I assume that they would adjudicate. Well, they might take our view. That is not at all improbable. At the naval conference the United States, Spain, Italy, Japan, and the Netherlands were on our side, and it might be that some of the other neutrals would take that view. We might establish our doctrine, but at the worst the court might take the opposite view. Is that sufficient ground for giving up the other advantages of the Declaration? Let me deal with this question a little in proportion. People have an idea that all the merchant ships of an enemy will be suddenly mounting guns and seizing our commerce on the high seas. I can not help thinking that it is only a very limited number of ships in any mercantile marine that will be fast enough to make it possible to convert them into warships. If they were slow ships they could not escape the first cruiser. They would have no defensive power, a broadside would sink any one of them, and they must trust to their heels. Therefore, it is only fast ships that will be converted, and the number of ships fast enough which it would pay to convert in the mercantile marine of any of our opponents could be counted on the fingers of our hands. Surely we can watch them, or what is the use of the British fleet? It would be our business to do that. I do not think it will be quite so easy as it looks in theory to convert merchantmen into warships on the high seas or to conceal the fact that when a ship is still in a neutral port she is not preparing for a commercial voyage but for something very different. Our consuls would watch her, and if that became ap-

parent we should take action and the neutral could not allow her to proceed. We have had trouble enough on that point ourselves. Unless she was fairly near a national port her career could soon be brought to a close by a British cruiser. This is not a new risk, and it is one that is enormously, grossly and senselessly exaggerated. Above all, if it is a risk to us it is ten times as much risk to anybody else.

No one can study this controversy with an open mind without seeing that behind a vast mass of opposition to these two agreements there is really a feeling of distrust and dislike of all international agreements on this subject. It is evident in the attacks upon the international prize court, in the appeal not to allow British prize court decisions to be reviewed by a court of foreigners, in the renewed attack on the Declaration of Paris, in the unreasoning tone of many of the arguments, often mutually destructive, which have been directed against these agreements. I think I have shown in instance after instance that the criticism of the Declaration has been based upon a complete ignoring of existing facts. It is condemned by comparison with a standard which never had any real existence. When we remember that this was the first attempt at an agreement upon many points upon which there were widely divergent views amongst the nations, that the delegates of the powers had to reduce chaos into order; when we consider that each provision had to be weighed carefully from the conflicting points of view of belligerent rights, the rights of neutrals and the interests of each nation, then I think we may claim that the two conventions represent a remarkable measure of agreement, a genuine and honest endeavor to create a code of naval law, and a real step in advance. In international agreements we must proceed step by step. To refuse an agreement which is a real advance because we do not regard it as perfect is to put an end to international conference. I believe these agreements, which chiefly deal with the rights of neutrals, will be of general benefit to the peaceful commerce of the world, and that as the greatest maritime nation we shall be the largest gainers.

The British Government has, and accepts, the responsibility of having proposed the international prize court, and of having the naval conference of London. We did so in pursuit of a policy which we think right and wise, the policy of promoting international agreement, which we hope to carry to a higher and wider development. In these agreements our views on many important matters have been accepted. We, with the other great naval powers, without one exception, have signed these agreements. The world is naturally looking to us to be the first to ratify them, because we are the power which took the original initiative. If we, for no adequate reason, and there is no

adequate reason, were to draw back now from those agreements so much of our own making, agreements so valuable to our peaceful commerce, how would the world interpret our action? Would they not say, "If Great Britain will have no agreement and will submit to no restriction in the interests of neutrals, then force is the only possible protection for our commerce. We must at all costs build more dreadnaughts." The navy leagues of all nations would have an argument made to their hands. We need no longer talk about limiting armaments. The race for armaments which is already exhausting the nations must proceed. The burden which is weighing heavily upon industry must grow. If we were to draw back now we should arrest—no man can tell for how long—the progress of international agreement, from which in a wider sphere, not we only, but our kinsfolk in our own dominions and in the great Republic across the Atlantic are now hoping great things for the progress and welfare of mankind.

SIR ROBERT FINLAY. Any one who was in the House at the commencement of the speech of the right honorable gentleman to which we have just listened who did not happen to be aware of what was the subject of the debate would have supposed that this was a mere party question which was under discussion. I really do not know why the right honorable gentleman through many parts of his speech, and particularly in the opening part, thought it necessary to assume so aggressive a tone. I think I might venture to tell him that if the people of this country are to be satisfied that this Declaration ought to be ratified, they will not be satisfied by strong language, and what they want is something in the nature of reason. The right honorable gentleman has devoted himself, as I shall show very largely, to answering arguments that never have been used by any responsible opponents of this convention. The right honorable gentleman has used one most extraordinary argument which I hope on reflection he will think fit to withdraw. He said that the hostility to this bill and to the convention to which it is intended to give effect is based upon a dislike of all international agreements. I venture to say that a more unfounded charge was never made, and the right honorable gentleman must be very poorly off for arguments when he has to back up his case by a statement of that kind. Can the right honorable gentleman point to a single speech by a single responsible member of the opposition taking up that line or justifying in the remotest degree the observation which he thought fit to make?

MR. MCKINNON WOOD. I am aware that no responsible member of the opposition has made a speech upon this question until yesterday. The right honorable gentleman has not correctly represented what I said. I said that behind the great mass of opposition to these agreements there is a feeling of distrust of all international agreements, and that is a statement well within the facts.

SIR R. FINLAY. I entirely dispute that statement. The right honorable gentleman confesses his inability to point to a single speech bearing out the statement he has made.

MR. MCKINNON WOOD. No, sir; I do not. The real leader of the opposition to the Declaration, who has written whole volumes on this subject, is the late member for King's Lynn. What I said was that behind the vast mass of the opposition—I did not say the official opposition here—to the Declaration there was this feeling of distrust of international agreements.

SIR R. FINLAY. The only support for that charge is that the right honorable gentleman says there is evidence of it in a book published by a supporter of the present Government.

MR. MCKENNA. He never said that.

SIR R. FINLAY. Towards the conclusion of his speech the right honorable gentleman made an even more remarkable statement. He appealed to the House to pass the second reading of this bill on the ground that if they did not do so the race of armaments would go on. Does the right honorable gentleman believe the passage of this convention will stop that race in armaments which we deplore? It will not stop the race in armaments. It will deprive us of some of our most effective weapons, and it will deprive us of advantages which as things at present stand we enjoyed. I think the right honorable gentleman made hardly a fair attack upon the opposition in his reference to the dominions and to the opinions which the representatives of the dominions have expressed on this matter. He said: "We were called upon to consult the representatives of the dominions." So you were, because it would have been a most extraordinary thing if a matter of this kind affecting all the parts of the British Empire had been carried through without taking the opinion of the representatives of the dominions beyond the seas. The right honorable gentleman seemed to attempt to use the fact that the representatives of the dominions have acquiesced in the passage of this convention as an argument why the House of Commons should consent. It would have been monstrous not to consult the dominions, but it is monstrous to suggest that in a matter which affects us vitally and which affects us far more than it can affect any one of our dominions, we should have our judgment biased by the fact that the consent of the representatives of the dominions has been given. The right honorable gentleman was, to use his own phrase, trying to use the dominions as pawns in the party game.

I agree with one observation made by the right honorable gentleman. This Declaration must be taken as a whole. Do we gain or do we lose under it, taken as a whole? I say we lose. Our gains are on comparatively small points, and are in themselves slight. Our losses are on vital points, and may be of capital importance to this country.

This ought not to be a party question at all. Surely, if ever there was a case when the House of Commons ought to have been invited to express its opinion free from the pressure of the party whips, it is such a case as this. The Government have announced they do not intend to relax the pressure of the party whips, but I think I may say the country will not be much influenced in its opinion by a vote in favour of the convention obtained in such a way and from the composite alliance which supports the present Government. I hope it is not too late to ask the Government to depart from this attitude which they have so far assumed and to allow members on their own side of the House to give effect to the opinions which many of them entertain upon this point.

The first matter to which I wish to direct attention is the question of the establishment of an international prize court. I cordially welcome the attempt to establish an international prize court. I have seen a good deal of the work of The Hague Tribunal. It has done most valuable work, but why is it The Hague Tribunal has done such service to the cause of peace? It is because the court has been well constituted. It has been composed of a comparatively few members—commonly five—and the members of that court have been jurists of the first repute, whose opinions commanded the confidence of Europe and of the world. Why is it the precedent afforded by the composition of The Hague Tribunal has been so widely departed from in the present case? We are creating a tribunal which is to determine the most important questions conceivable for this country, questions which arise as affecting neutrals, and questions which affect even an enemy's subjects if they are said to be acting in contravention of a treaty or of an act of Parliament of their own country. We have in our country prize courts of unrivalled prestige and authority with a history behind them of which no other country can boast for its courts. We are proposing to subject those tribunals to an appeal to a court sitting abroad, and surely the very least thing that could be desired of a court that was to lay down the law which was to be binding upon the Privy Council and our other prize courts would be that it should be one of such composition as to command the confidence of this country and of all the countries who might have anything to do with it.

I say the constitution of the international prize courts is thoroughly defective. Do honorable members who have been asked to vote for this Declaration and for this bill realize what that court is to be? It is to consist of 15 members. Great Britain will have one member upon that court. There will be 14 others. Seven of those others will be named by the United States, by Japan and by four of the great powers of Europe. That makes 8 in all. Where are the other

7 to come from, the other 7 upon whose votes a question of vital importance to this country may turn? You have got some three dozen States. I will not read the names of all of them. There are the smaller European powers, of whom all that is to be said is that their interests are not comparable for one moment with those of Great Britain. Then you have a series of States—South American Republics. You have Bolivia, Chile, Colombia, Ecuador, Guatemala, and so on. I need not read the names. Honorable members will find them in the schedule which contains the agreement for setting up this international prize court. The names are more eloquent than any observations can be. We are to have Haiti, Paraguay, Peru, Persia, Turkey, Roumania, Salvador, Uruguay, and Venezuela. I venture to say that to set up a court of this size, in which Great Britain is to have only one voice out of fifteen, and a court constituted in that way is a proposal so outrageous that it is almost incredible a responsible Government could make it. The interests of Great Britain far outweigh the interests of any other country. They are nearly as great in these matters as the interests of all the rest of the world put together, and we are to have one voice in fifteen—the fifteen made up in the way I have indicated.

The truth is the promoters of this convention seem to have fluctuated between the idea of a court and a sort of little parliament to consist of delegates from all the States, big or little, that were parties to the convention who were to represent the interests, real or supposed, of their country. Of course, these small States are to sit according to rota and in turn, but the vote of the State which is sitting for the time will have as much weight as the vote of Great Britain will have on questions which may vitally affect Great Britain, and one can see whether it is likely a tribunal so composed would command the confidence either of this country or of the world generally. A court of 15 is far too large. It would not be effective as a court of justice. The experiment has been tried in the northern part of Great Britain itself, and no reform was ever more welcome than that which broke up so unwieldy a court. A court of that kind is preeminently unfitted to deal with what will be very largely questions of policy. Let us by all means have an international prize tribunal, but not this tribunal. Take The Hague Tribunal as your model, and, if you get an effective tribunal of that kind, I quite agree it is a great step in advance. When the court was first suggested it was proposed it should be left to make the law as it went on, "very much in the rough," in the language of M. Renault, reporting on the subject: but, of course, it was very soon realised, and the voice of the country made itself heard upon it, that it would be a monstrous thing to leave any tribunal without guidance from a clear code as to the interests of this

country. Our position is peculiar. The fleet is our only means of offence or defence. Our food comes by sea. We have only six weeks' supply in this country at any one time, and we have an enormous carrying trade. It was recognised that if the proposal for the international prize tribunal was to go on a code must be provided, and the Declaration of London was in consequence entered into. The first question is, how far does this so-called code cover the ground. So far as it does not deal with any matter, the court is left to decide without any guidance whatever, according to its own ideas of equity and good conduct. It is left without any guidance whatever, and on any points on which the Declaration of London is silent we are committing our vital interests to the decision of a tribunal unfettered by any direction and at liberty to make the law as it pleases.

There are three points, all of them important, on which it was found impossible to come to any agreement. The first related to the rule of 1756 as affecting certain branches of trade carried on in time of war. The second related to the question of whether property in goods should be determined by nationality or by the domicile of the owner for the purposes of capture. I pass by these points, not because they are unimportant, but because their importance is dwarfed by the overwhelming importance of the third point on which no agreement was arrived at, and that is the right to convert merchant vessels into men-of-war on the open sea. On this point there was an irreconcilable difference of opinion. A convention was drawn up dealing with the conversion of merchantmen into men-of-war. That convention consists almost entirely of mere platitudes. It was hardly worth while putting into a convention. The only important part of it is the preamble, and that recites that no agreement could be arrived at on what is the one and all important question. The preamble states that on the question of the conversion in time of war of merchant vessels into fighting ships the powers have been unable to agree whether such conversion may take place on the high seas. That question is vital to us as belligerents. To what purpose is it that we seal up the enemy's fleet in port? We know where the enemy's war vessels are, but if a merchantman may go to sea, and, on reaching a convenient point for preying upon our commerce, be declared by the captain to be a war vessel duly commissioned by the other belligerent and authorised to capture our merchant vessel. just imagine what havoc might be inflicted upon our trade under such circumstances. This vessel goes out under the disguise of a peaceful trading vessel, and then, at sea, proclaims herself to be a man-of-war. I suppose the same process may be gone through again, and, having done her business of destruction, she will be able to reconvert herself into a peaceful merchantman and seek her home again. I say that the first principle in these matters is that a vessel must abide by the character in

which she leaves her own territory. That is obviously fair. The right honourable gentleman says, "Hear, hear."

THE FIRST LORD OF THE ADMIRALTY (Mr. McKenna). That has always been the British view.

SIR R. FINLAY. And the right honourable gentleman admits its importance.

MR. MCKENNA. Certainly.

SIR R. FINLAY. It is overwhelmingly important. The right honourable gentleman who spoke before me said, "Why, if it is a serious matter, two can play at that game, and we can convert our merchantmen in the same way." But whose lines of trade is it that would stand to lose by such a practice?

MR. MCKENNA. Will the right honourable gentleman allow me a minute? I thought he was going to show how the Declaration of London affects this point.

SIR R. FINLAY. Yes, I am going to show how the Declaration and this bill and convention would affect it. I say that, as a matter of ordinary fairness, no vessel ought to be allowed, having quitted her own territory as a merchantman, to be converted on the high seas into a man-of-war, and no such vessel ought to be recognized as entitled to the privileges of a belligerent vessel. The Declaration affects this point by its absolute silence upon it—its absolute silence. The Foreign Office has told chambers of commerce and any members of the public who have chosen to inquire, that our position is not affected by what has been done. I say that that is a complete mistake; our position is affected, and vitally affected, the instant such a conversion may take place on the high seas, because, if this bill passes, and the convention scheduled to it becomes binding upon us, the question whether such a conversion may take place on the high seas will come to be determined by an international prize tribunal.

MR. MCKENNA. Not as against us, if we are fighting. If we are belligerent, that question would not come to be decided by the tribunal as against us.

SIR R. FINLAY. Not as belligerents, as the right honorable gentleman has said, and this is an excellent specimen of the way in which the Foreign Office have dealt with this case in putting it before chambers of commerce and the public generally. Not as belligerents. In that the right honourable gentleman is perfectly right. But when the question comes before the international prize tribunal at the instance of a neutral, it may be that in that case in which a neutral is concerned and to which perhaps Great Britain is not a party at all, the decision of the international prize tribunal, according to their ideas of equity and good conscience, may be that such conversion may take place, and does the right honourable gentleman in that case say that that decision would not prejudice our position?

Mr. McKenna. Will the right honourable gentleman forgive me? He stated the case of a foreign merchant ship being converted at sea and, on the conversion, attacking our commerce. I ask him, how that is affected under the Declaration of London? And I would remind him that it would not be affected under any decision of an international prize court.

SIR R. FINLAY. The right honorable gentleman will no doubt have an opportunity of arguing this point when he speaks, but I may suggest this to him, that he entirely misses the point. If you have a series of decisions, or even only one decision, in which the international prize court, according to their ideas of equity and good conscience, hold that such conversion is lawful, shall we be in the same position for saying that it is intolerable and that the vessel is not entitled to the privilege? I hope I have made my point intelligible to the right honorable gentleman, and I invite him to deal with it when he comes to speak. It may not affect us as belligerents, but what will be our position should the question be decided adversely to us when the matter arises at the instance of neutrals? I venture to say the Foreign Office assumed a very serious responsibility indeed when it assured chambers of commerce, and notably the Glasgow Chamber of Commerce, that on this point no change is made in the existing position. A change is made, and a change of the most vital character. This Declaration is silent on a point of capital importance, and we are left to the unguided views of this body of 15 members, representing all the States, great and small, who were parties to the convention. I assert that the attitude which the Foreign Office took up and the attitude which the right honorable gentleman assumed just now, is a very good specimen of the facile optimism with which vital interests have been played with. The Foreign Office told the Glasgow Chamber of Commerce, in another letter, that they were keenly alive to the importance of this question of the conversion of merchant vessels into ships of war on the high sea. They are keenly alive to it, but they show their keenness by leaving it to the unguided decision of this court of 15.

I turn now from the consideration of what the Declaration of London itself does not contain and its consequences and disastrous effects, owing to the creation of the international prize court without any guide for dealing with so important a matter, and I turn to the question of what the Declaration does contain. I think I shall be able to satisfy the House, at any rate I hope to be able to do so, that the sins of commission by the Declaration are quite as serious as its sins of omission. There are two preliminary observations I shall ask leave to make. The first is that the preliminary provision of this Declaration of London is extraordinary in its terms. It runs:

The signatory powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

That statement is a very audacious one. To suggest that it has the consent of all is totally untrue. The changes on which the right honorable gentleman has dilated may be good or they may be bad, but they are undoubtedly changes and changes of a very important character. The convention begins by stating that the powers are agreed that what is contained in it represents the generally recognized rules of international law. I do not refer to this merely for the purpose of criticising the words, but I would point out it is a most unfounded statement, and I refer to it because of the vital bearing it has on the statement made the other day by the Prime Minister when he told the representatives of the dominions that there was nothing in this Declaration which would prevent Great Britain from subsequently advocating modifications or changes. I say that this Declaration does throw a complete obstacle in the way of that. Suppose Great Britain comes forward, as the Prime Minister suggested, with a proposal for a change in the Declaration; or suppose that the 12 years of the Declaration have run out, and we desire to have another declaration embodying vital changes. Might we not be told, and told with very great effect, "You have solemnly admitted by the Declaration of London that the rules which are embodied in it are in accordance with generally recognized principles." How could we then be prepared to argue that the rules were not in accordance with the principles of international law? I say that that initial statement is a most unfortunate and disastrous one, and it cuts the ground from under the Prime Minister when he states that we could at any time propose a modification or alteration of this Declaration.

Another very important thing in this matter is in connection with Renault's report. We are told that that report is to be regarded as part of the agreement in accordance with the practice of foreign courts. I venture to say that there is a great deal of confusion, and that what has been said upon this subject is very ambiguous. The courts in some countries, unlike our own court, look at statements of this kind, made by the parties by whom the agreement has been entered into. But our own courts would only look at the agreement itself in order to see what the parties have agreed upon, and so far as I am aware, the court of no country would look at a report of this kind for the purpose of varying or contradicting the agreement into which the parties had entered. But that is what this report to some extent does. The report is, in at least one instance, in favor of a contradiction of the text. One article says a ship's papers are "to be conclusive evidence of the destination of the ship, unless the ship is out of her course." But the report, on this article, says that the ship's

papers are not conclusive if it is shown in other ways that the statements contained in them are untrue. There can be no contradiction more complete. The text says that the papers are conclusive, except in one case, and the commentary says that the papers are not conclusive at all, but can be shown to be untrue in other ways, and goes on to say actually that this is so obvious that it was unnecessary to mention it. All I can say is that if an article agreeing that the ship's papers are conclusive except in one case lets in proof that they are untrue in other cases, then words neither in the English nor the French language have any meaning whatever. I protest against such a slovenly proposal as that of incorporating this report with the agreement. If the parties are agreed to it let them put it into the agreement itself, but do not let them add to the agreement a general reference to a report and say that that is to be taken as containing other matters to which they are agreed. What is it that we have agreed to, and this leads me to turn to the substance of the Declaration.

I desire to point out to this House that there are two points of capital importance on which we have made a complete and even abject surrender to the views of foreign powers of those principles which have always been entertained in this country. The first relates to the question of contraband. The second to the destruction of neutral vessels. With regard to contraband a great deal was made by the right honorable gentleman of the free list. I venture to say that the importance of that free list is vastly exaggerated. Are there any articles in that free list which it can be very reasonably anticipated could be declared by any power to be contraband of war? And apart from that there is the question of the proportion of the vessels, neutral or British, in which such articles that are mentioned in the free list are brought to this country. I say it is a very good thing to have a free list. I do not undervalue it but I say that for controversial purposes the Government have most undoubtedly magnified the importance of the introduction of that free list. The real importance of the question of contraband to us is in its bearing upon food supply. I need not enlarge upon the importance of that to this country. Our food supply in regard to the enormously greater part of it is sea-borne, and we have a very slender stock in store in this country. The Foreign Office says the question of contraband only affects provisions if they come in neutral vessels, and 90 per cent of the corn comes in British vessels and only 10 per cent in neutral vessels. I take that for the purposes of my observations from the Foreign Office. The proportion of provisions of other kinds coming in neutral vessels is very much greater, I believe some 30 per cent. But what I desire to point out is this, that the proportion of British and neutral vessels bringing food into this country in time of peace is no criterion whatever of the propor-

tion in time of war, and I must say that I think that the Foreign Office has assumed a very serious responsibility when they take upon themselves to assure chambers of commerce, and through them the people of this country, that the matter was of little importance in view of the fact that 90 per cent of our corn comes in British ships. What percentage would come in neutral vessels if we were at war, particularly, if we were hard pressed? Everyone knows it would be enormously increased, and I most respectfully submit to this House that it is not right that the people of this country should be told that after all the matter was a very small one, because 90 per cent of our corn comes in British vessels. The law of conditional contraband is perfectly clear. It has always been held in this country, it has always been held in the United States, and it has been laid down authoritatively that food is contraband only if it is for the army or the fleet, and is in consequence of that part of naval or military equipment. A very able writer on international law, Mr. Hall, says the opposite view is not arguable, and a right honorable gentleman of considerable authority in these matters to whom honorable gentlemen on the other side might be disposed to listen, Mr. Bryce, our ambassador at Washington, expressed himself on this subject on the 11th of August, 1904, in a debate in the House in these terms:

Food, by the general consent of nations, was not contraband of war unless it is clearly proved to be for military or naval purposes. In 1885 an attempt was made by France to treat rice as contraband of war. Lord Granville protested in the most energetic manner, and in point of fact rice never was treated as contraband of war.

That authority is one which I think is amply borne out by a more extended view of the law on this point, into which on this occasion I do not intend of course to enter. But this I may say without fear of contradiction, that for more than 100 years there has never been an attempt to treat food as absolute contraband of war except on two occasions. The first was that of France in 1885, and in that no seizures took place, and the question therefore never came up for adjudication. The right honorable gentleman referred to a letter from Prince Bismarck to the Chamber of Commerce at Kiel on this point, but after all that letter does not profess to be a statement of law, and it is a statement in such terms as would justify any act in time of war. All that it comes to is this, that Prince Bismarck did not intend to interfere. He said that interference might do more mischief than it would do good, and I venture to say that it is perfectly impossible to treat that as a statement by Prince Bismarck that in the opinion of German lawyers food was properly treated as absolute contraband of war. The other case is the case of Russia in 1904 in the war with Japan, but that incident really tells against the Government advocates, because protests were made, and Russia with-

drew from the position which she had assumed. She assented that provisions should be contraband only according to the use to which they were to be applied, and that was the doctrine for which Lord Landsdowne contended. The incident of Russia therefore is merely a case in which an attempt was made by a great power to treat food as absolute contraband it found itself constrained to withdraw from that position, and it tells very much the other way.

I said I would not go into the authorities at length, but may I be allowed to enter one word of protest against the manner in which the Foreign Office has dealt with this great question. They have laid down that we are exposed to the imminent danger of having food treated as absolute contraband. They have expressed themselves in terms which would lead the public to suppose that in the view of a great many powers food was absolute contraband of war. I venture to say that in putting that forward the Foreign Office was very oblivious of its responsibilities. Have they ever recollected what use may subsequently be made of such a statement? They make that statement for the purpose as they think of securing a controversial triumph at the moment. But a statement of that kind ought not to be made except under a sense of the greatest responsibility and realizing the prejudicial effect that it may afterwards have upon the position of this country. That ought not to be put forward as a move in the game of party which is being played on this particular part of the subject. With regard to the statement of Prince Bismarck, which is relied upon by the right honorable gentleman, it is perhaps a sufficient answer to say that Germany, in the views it submitted as a basis for arriving at an agreement, did not contend that food was absolute contraband. They said distinctly that food was conditional contraband.

Mr. McKINNON WOOD. The right honorable gentleman must not make that statement. Germany in her statement did put some kind of foods as absolute contraband.

Sir R. FINLAY. We are now upon corn. What is the use of leading us off the scent by saying that Germany said that tinned provision were obviously of such a nature that they were intended for the use of troops? What we are dealing with is the supply of corn to this country in time of war and the right honorable gentleman will agree with me when I say that no single power, with the qualified exception of France, treated food as otherwise than conditional contraband, and the question of whether it was contraband depended upon whether it was intended for the military or naval forces of the Empire. It is quite true that France, and France alone, did put in a clause which the right honorable gentleman has read which did put forward the claim which was put forward in 1885, but the document, I think, was an old one, prepared not for the purpose of the conven-

tion, and it contained the statement that food might, under certain circumstances, be declared to be absolute contraband of war. But France stood alone in the matter, and I put it to the House that entirely gets rid of the effect of the letter of Prince Bismarck, of which so much has been made here and in the country, and that we are face to face with this that with the general consent of the great majority of countries food is only conditional contraband. Then it is said that may be the law, but what security have you that it will not be contraband? In the case of corn I think we have a sanction, and a sanction of the most effective kind. Suppose that we were pressed in war and that we had partially or temporarily lost command of the seas, would there not be a great transfer of the carriage of corn to this country from British ships to American ships? It would be most profitable to the United States ships to bring corn over which would be selling at a very good price in this country and there would be great transfer of that kind. Will any honorable gentleman say that any power at war with us would be likely to provoke the displeasure of the United States by declaring that corn carried in a United States vessel to this country should be absolute contraband of war? Not only is the law on the matter clear, but it has behind it, so far as we are concerned, a sanction of the most effective kind, for happily I think we may dismiss the very idea of the possibility of war between this country and the United States as not within the range of practical politics, and as long as we are not at war with the United States we may depend upon it that no country however powerful would incur the displeasure and the possible hostility of such a power as the United States by putting forward an unfounded claim to treat food brought to this country as contraband of war. If this Declaration were adopted the hands of the United States in this matter would be tied. If we ratify and the United States ratify, the United States would be bound, like ourselves, to the conditions which are contained in this Declaration, and when those conditions are looked at it will be found that we should not be very much better off, if at all, than if corn were declared to be absolute contraband of war. The Declaration on this point is a very good specimen of how it affects us on other points as well. It opens in a very promising way by conceding a general principle. Then comes an exception and we find that while we have been presented with a general principle the principle is eaten up by the exception which those taking a different view want. The 24th article said food was conditional contraband. The 33rd article said it might be seized if it was destined for the use of the armed forces or Government departments of the enemy State. But article 34, an innocent looking clause, which seems to have passed with very little notice, under the guise of defining what are the circumstances which will raise the presumption of this

fact, really gives away the whole position of this country. May I refer the House to its terms?

The destination referred to in article 33 is presumed to exist if the goods are consigned to enemy authorities or to a contractor—

That is, of course, a mistranslation. It ought to have been a dealer or trader—

established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy or other place serving as a base for the armed forces of the enemy.

If it is consigned to the enemy authorities, a cargo of wheat on its way to the Board of Trade, which in time of famine in this country owing to the war, was importing wheat for the relief of the civil population, might be seized. If it is consigned to a dealer who notoriously supplied the Government, there is not a corn dealer in a large way in this country who would not notoriously in time of war sometimes have contracts for the supply of the Government. If it is consigned to a fortified place, how many of our ports should we be content in time of war to leave unfortified? We should find it necessary to set them up, and if we set them up we should incur the penalty that the corn coming to that port was consigned to a fortified place or a place serving as a base for the armed forces, that is a base either of actual operations or a base of supply as is stated in the report and as the words of the text clearly mean. The right honourable gentleman offers us his own assurance that that was not so, and he referred us to the Lord Chancellor; but one part of the Lord Chancellor's observations he did not quote. The Lord Chancellor said he gave this as his opinion on which he did not entertain any real doubt. What the precise state of mind indicated by the phrase, "no real doubt," may be I do not quite know, but I should rather gather that some doubt had at times entered into the mind of anyone who used a phrase of that sort. When a man says, "I have no real doubt" it is really a sort of admission that he sometimes had twinges but has got rid of his doubt at the time that he speaks. The true rule is the English rule that the presumption only arose if the goods were consigned to a port of military or naval equipment, and under that it was decided in our courts, and it shows what the principle was, that Bordeaux was not such a port, although military or naval equipment went on there, but on the other hand Brest was, because the predominating character of the port is the test. But with the rules which are introduced by article 34 a complete revolution is effected, a revolution almost as serious, I am not sure it is not quite as serious, as if food were declared to be absolute contraband. The Foreign Office argued in their correspondence with the chambers of commerce that the presumption after

all was rebuttable, and gave the Glasgow Chamber of Commerce a sort of legal lecture upon presumptions of law and presumptions of fact.

I am sure the Glasgow Chamber of Commerce were grateful to the Foreign Office for their law, but did not touch the point on which the chambers of commerce were insisting. For all practical purposes, and there was not in the speech of the right honourable gentleman the faintest recognition of this fact, the real question is how will article 34 be construed by the captains of the enemy's cruisers whose duty it is to intercept food supplies to this country, and how they would act under it. They would say, "This is going to a port which beyond all question is fortified." It is true the right honourable gentleman said the convention did not mean that; but if it did not mean that why on earth did it say it? The captain of the cruiser would seize the cargo and would leave the lawyers to wrangle over it some years afterwards, by the time that this country had perhaps been starved into surrender. That is really the practical question with which we have to deal, and it is no use telling us that in the opinion of the right honourable gentleman the words do not mean what they say. The terms of this article 34 are so very wide that we have no security whatever.

Then you must add to article 34 two other considerations which make it really of overwhelming importance. The first is that we should have foreign powers converting merchantmen into men-of-war on the high seas. We could not check that. We might endeavour to pursue them, but we could not seal them up as we could seal up the enemy's fleets consisting of men-of-war. We should be exposed at any moment to the danger of a converted cruiser of this kind, which had sailed as a merchantman appearing as a man-of-war, and putting in force the rigorous rules laid down by article 34, which really would enable seizure in every case. More than that, by the rule with regard to the destruction of neutral vessels, that converted man-of-war would be able to sink the neutral vessel at its own discretion according to the articles. Our position in this country if we were hard pressed, if we temporarily lost the command of the seas, would be most serious under the combined effect of these three provisions, and more than that, we should not be safe at all even if we retained the general command of the sea, because we never could, however complete our command was, be secure against a merchantman appearing at a critical point, converting herself into a man-of-war and proceeding to seize and sink neutral vessels bringing corn into this country.

On looking at the papers I found with very great surprise that article 34 is not mentioned at all in the report to the Foreign Office

of the British delegates. It seems to have escaped attention altogether. It is an innocent-looking article about rules of evidence and presumption, and it is not referred to, and, as far as I can find out, never formed the subject of discussion except upon two perfectly inferior points. One was the proposal to add the words "or of supply," which was admitted to be unnecessary, and the other was a subsidiary point with regard to the trader or dealer being resident in the enemy country. I should be much obliged if the right honorable gentleman will correct me if I have overlooked anything, but I cannot find that at the conference there was any discussion. That is a very serious matter. Article 34 is the most important article in the convention from the point of view of this country, and it seems to have slipped through. The truth is that article 34 is simply an adoption of the draft put forward by Germany. It will be found that the differences between the German draft and article 34 are absolutely immaterial, and what we have done on this vital point of the most capital importance is simply to accept what was prescribed by Germany, and, as far as appears on the printed document, without having adequate discussion.

The advocates of the Declaration had laid great stress on the fact that the doctrine of continuous voyage in the case of conditional contraband is put an end to. I think we gain very little by that abolition, and that some continental countries gain a vast deal more. One advocate of the Declaration is reported to have said in another place that all that has to be done is to turn the vessel bringing corn to Havre round and take her over to England, where she might deliver the corn with perfect safety. That is a complete delusion. The real destination of the corn in that case would be England, and under article 35 the vessel might be seized at any time.

The statement is made very rashly, and I do not think any responsible gentleman on the front bench opposite will defend it. All the corn taken to that port, or to any other French port, would have to be transhipped. There are many honorable and right honorable gentlemen who know the capacity of merchant vessels trading on the Atlantic better than I do, but I am told that these ports are unsuitable for the transhipping of the very large vessels in which corn is habitually brought to this country. It would be a very troublesome and a very expensive operation, and it would give us very slight advantage indeed. But what an enormous advantage does the abolition of conditional contraband give to Germany! The right honorable gentleman has said that Germany may get her supplies by land. Of course she may, but sea carriage is a great deal cheaper, and under this abolition of conditional contraband on a continuous voyage, on which the right honorable gentleman plumes himself as really having obtained a concession, Germany gains a

great deal, because she can in a far cheaper way get corn brought in any amount to the Dutch and Belgian ports for the purpose of supplying her army than she can possibly do by rail.

I do not think the right honorable gentleman will controvert that proposition, and I say that this concession which he claims to have gained for this country is in point of gain to us absolutely nothing as compared with the gain to Germany. I need not dilate on the importance of this article in the case of our being neutral. I am sorry to detain the House, but this is a matter which cannot be dealt with briefly.

I pass on to the question of the destruction of neutral bottoms. I venture to say that on that question the Foreign Secretary was absolutely right in the way he stated the law in the instructions given to our delegates. The Foreign Secretary stated the law in a way which would have led one to hope that on this point we should stand firm. Russia had asked in 1907 for the right of destruction of neutral vessels and enemy vessels on the ground that she had very few ports except those at a great distance from the probable scene of operations, and that therefore it would put her, or any country similarly situated, at a disadvantage as compared with a country with any number of ports. Is that any reason for altering the law in a manner which is in itself unfair and improper according to the statement of the Foreign Secretary himself? I say it is no reason whatever. It is a sort of idea that there is to be an equal chance for both belligerents, and that the belligerent with a great many ports is to be brought into the same position as the belligerent which has very few ports, and that it may destroy a neutral prize. Surely the idea is somewhat preposterous. On this point on which we started with such fair prospects, judging by the declaration of the Foreign Secretary we have made, as I shall point out to the House, a complete surrender. The Foreign Office has adopted in terms the Russian proposal on this point—a proposal which we well knew was put forward on the ground that owing to the inconvenience of their ports being distant they wished to make it the practice to destroy a neutral prize.

The completeness of the surrender we have made is apparent from the story. It begins with the statement of the law by the Foreign Secretary. Then you have the Russian proposal. What they wanted was that a neutral vessel should not be destroyed "except in a case where its preservation might compromise the safety of the vessel capturing, or the success of its operations." Then came the British instructions of 1st December, 1908, in which the Foreign Office begins to give way. These instructions say:

An effort should be made to secure the adoption by the conference of the view that inability to spare a prize crew, or the mere remoteness of a convenient national port, does not constitute a military necessity which would justify the sinking of a neutral prize.

It shows a certain amount of simplicity to put forward that proposal. The whole reason of the Russian proposal was that she had few ports and that therefore she must have this extreme right to destroy neutral prizes because her ports are not within convenient reach. We put our proposal forward, and it was rejected. We submitted, and adopted in terms the Russian proposal without qualification. Words are added at the end about "the success of the operation in which it is engaged at the time," but these words make not the slightest difference, and the result is that we have abandoned the sound position which this country has always taken up, and we have adopted the ground which was put forward by Russia, who explained what the reason was why she took the particular view which she advocated. It is said, "In vain is the net spread in sight of any bird." The Russian net was spread in sight of the Foreign Office, and all the same it came in.

The Government say that they could not get any other agreement. I say, better a thousand times no agreement at all than this. It gives up everything. Our proposal was rejected by the conference, and the net result is that destruction may be effected where the safety of the captor of the vessel would be jeopardised by not destroying, or the success of the operations in which it is engaged at the time would be imperilled. I say, that would entitle Russia in every case to destroy. The safety of a cruiser would be compromised if she had to take a prize to a distant port, or the success of the operations in which it is engaged would of course be imperilled. These operations are cutting up the commerce by which food is being brought to this country, and in every case, according to the rule proposed by Russia, and which we accepted, Russia and other powers in a similar position would be entitled to say that the destruction of a neutral vessel is justified. My complaint is that this most unhappy article legalises and makes usual and habitual that which has never been done except under circumstances of stringent necessity, as an act of military necessity, and subject to making compensation in every case where done to the person injured. I do not deny that it might be done as an act of military necessity. I will not say that it would be always wrong, for there are circumstances in which the belligerent feels it a moral duty to permit a wrong, subject to compensation being made afterwards. But these are strictly exceptional cases. What this article does is to make the practice that which has never been recognised by us, but which has been advocated by Russia for the reasons I have given.

I venture to say that there is no more vicious mode of reasoning than that adopted by the right honorable gentleman who opened the debate. He put the extreme case of a neutral vessel coming with a supply of arms or ammunition, when a battle was actually

impending at sea between the forces of two belligerents. He said there would be no opportunity for carrying the vessel to port, and he asked, Would you not destroy that vessel as the neutral vessel would be then taking part in belligerent operations? But I protest against taking extreme cases of that or any other kind, and from, arguing them because destruction took place under circumstances therefore you are to make a rule of what has always been highly exceptional. The Government says that the articles treat it as exceptional. Article 49 says it is exceptional. But the exception to the rule that neutral vessels may not be destroyed is that it may be done in every case where the safety of the captor or the success of his operations would be imperiled if he abstained. The exception is absolutely eaten up by the rule, so far as desired by those who put this forward. Article 51, which refers to the exceptional necessity referred to in article 49, does not carry it one bit further. We had an extraordinary argument from the right honourable gentleman when he read an extract from the report of our delegate saying that the representatives of some foreign power had assured him that cases of destruction under the article as it stood would be extremely rare. My honourable and learned friend the member for York (Mr. Butcher) asked whether there was any record in the Blue Book of that statement having been made by the representatives of foreign powers.

MR. MCKENNA. There is.

SIR R. FINLAY. Will the right honourable gentleman give me the reference?

MR. MCKENNA. It is on page 98. The words are:

The delegates representing those powers which have been most determined in vindicating the right to destroy neutral prizes, declared that the combination of the rules now adopted respecting destruction and liability of the ship, practically amounted in itself to a renunciation of the right in all but a few cases.

SIR R. FINLAY. Perhaps the right honourable gentleman will do me the honour of following what I am going to say.

MR. MCKENNA. I assume the right honourable gentleman did not wish to say that the report of our delegates misrepresents what was said by any foreign delegates.

SIR R. FINLAY. I did not mean to say anything of the kind. But what I did say was that apparently there was no statement in that Blue Book of what was said by the representatives of these foreign powers. We are offered this flimsy security in reference to the terms of the article which was drawn by Russia for the purpose which Russia admits in her claims to destroy under it. Then we are told that the representatives of foreign powers say that it would be very

rare indeed. There are no restrictions there to make it rare. It legalises in every case. If any attempt were made to put forward such an argument as that the representatives of foreign powers would say: "We do not impugn your good faith for one moment in making that statement through your own Foreign Office, but you must have misunderstood us. Look at the article. It is as simple as can be. We explained why we wanted it, and it is absurd on the strength of a misunderstanding by you of what was proposed in conversation to seek to qualify the terms of an article which is as plain as any article can be." There is one passage from an eminent Russian jurist on this very subject to which I would like to call the attention of the House. Monsieur de Martens, writing in 1887, after laying down rules as to the circumstances under which neutral vessels may be destroyed, in terms wider than we shall consent to as representing true international law goes on, that the distance of Russia's ports from scenes of naval operation often obliges Russia to sink her prizes, and he says:

This measure of a general character will excite without doubt against our country a universal dissatisfaction.

(*Mécontente générale.*) And he goes on:

What the maritime law of all States considers as a means to which recourse must not be had except in the last extremity will necessarily transform itself for us into the normal rule.

That is precisely what this article does. I had occasion, when I was law officer to go very carefully into the views of jurists in different countries upon this point, and the result was that the English and the American authorities are unanimously against the right to sink a neutral vessel, and that there is no agreement amongst jurists of the Continent to the effect that they are generally in favour of it. Exceptions are found here and there, the views do not always accord, but it can not be said that the jurists of the Continent are generally in favour of the destruction of neutral vessels. In fact, a very well known and very authoritative German, treating of this matter in his handbook of international law, uses an expression to which I call the attention of the House, because it has a great connection with some statements made by the right honourable gentleman in opening this debate. What Dr. Goeffkin said in his book, which was published in 1889, was:

The destruction of neutral ships can be allowed only in cases of extreme necessity, since this case is plainly distinguishable from the case of an enemy's ship where condemnation is certain, which necessity is to be admitted if the ship is no longer seaworthy or the captor is being pursued by a superior enemy.

In face of that how can we be asked to assume that our position is so unfavourable as the Foreign Office, for controversial purposes, tried to make out? A French writer, M. Despagne, in his *Inter-*

national Law, published in 1889, speaking of the destruction of vessels, said:

This destruction is allowed only for enemies' ships and not for neutral vessels in case they are sinking.

And surely it is perfectly reasonable in the case of neutral vessels that all they should be liable to is to be taken into port and condemned if the circumstances warrant. Destruction, as applied to neutral vessels, is for reasons which these authorities give an unjustifiable course. It is true that Russia destroyed our vessels at the time of the war with Japan, and we did not get compensation. Well, we did not think it worth our while in the case of these vessels to bring that extreme pressure on Russia which we might have brought to bear upon her, but it would be a grave mistake to suppose that the pressure that we might bring to bear on any power pursuing this practice habitually, if our hands were not tied down by the Declaration, would not have a most important effect. The truth is if we had got anything even in the nature of a compromise there would be something to be said for the Government, but we have got no compromise. We have got an unconditional surrender to the Russian view legalizing this practice of the destruction of neutral vessels.

The Foreign Office stated—and it is one of the complaints which I have to make against the correspondence conducted by them with chambers of commerce—in a letter of 13th October, 1910, with reference to the destruction of neutral vessels—

The modifications introduced by the Declaration place this country in future in a more favorable position than it has hitherto been.

There is not the slightest foundation, there is not even a colorable foundation for that statement. This country has given up everything, and has gained nothing whatever by way of compensation. I have concluded what I desire to say on these two points. There are many other points that I might deal with if I had not trespassed at inordinate length upon the time of the House. With regard to blockade I only say one word. The rule as to blockade is one which leaves an enormous deal to the discretion of the international prize court. It is provided that capture may take place only within the zone of operations of the blockading vessels. Then there is a subsequent article with reference to continual pursuit. What is the zone of operations? On that point there is a long note which I have read with attention more than once, and which throws no light whatever on the question. It is a great deal longer than the article, but it is not a bit more clear. It leaves the question as to what is the zone of operation of a blockading vessel absolutely in the dark, and that point goes without any assistance whatever to the international prize

court which is to decide a matter which may most vitally hamper the efficiency of our ships.

Mr. McKenna. How?

Sir R. Finlay. Because if the international prize court take a narrow view of the meaning of the term "zone of operations," our captures beyond that zone would be illegal. The right honorable gentleman is making the same mistake that characterized his interruption about an hour ago. The decision with regard to the zone of operation may be given in any case which has arisen between neutrals. Once two countries are at war as belligerents they do not litigate before the international prize court. They litigate in another manner on their own account. But if the international prize court put a very limited meaning in cases coming before them at the instance of neutrals or of enemies, subjects in the cases provided for, then the hands of our cruisers would be tied, and we should be bound by the law as laid down by the international prize court. I hope that I have succeeded in making my point clear. It seems to me very clear. I hope that I am not unduly sanguine when I think that I may possibly have converted the right honorable gentleman. Then what is to be done? It is said that we have gone so far that we ought to complete this matter. I think we have made a very grave blunder in going so far with this Declaration as we have, but I say that we have not gone so far that the matter can not be set right, and I say that before this convention is ratified it certainly ought to be inquired into much more than it has ever been yet.

My own view is that the convention is one that should not be ratified. But, of course, the test of examination is one which, if the convention is a good one, it would survive in spite of my belief; but I say that to ratify this convention without further examination would be an act involving the gravest responsibility on the part of the Foreign Office, a responsibility the full extent of which may not become manifest for many years, but which this House as trustee for the country, not only for the present generation, but for future generations, is bound to take into account before it gives its assent. Much better have no agreement at all. Our position is a pretty strong one at present. We have got the United States in agreement with us on, I think, almost every point, and Japan, to a very large extent, is substantially in agreement. The idea seems to be that we should insist on having an agreement, a good agreement if possible, but better a bad agreement than none at all. Unless we can improve our position, let us remain as we are, relying upon our own strength and on the consent of those countries which take the same view as we do. We will never purchase safety by surrender. I am sorry to say that in my view the ratification of this convention would be a national calamity of a grave character.

Mr. ATHERLEY-JONES.¹ In the first place I wish to express my very deep regret that His Majesty's Government have not afforded a free hand to the House of Commons. No question of Liberal principle is involved in this discussion. Liberal interests are no more affected than the interests of the Conservatives in this particular question. The National Council of the nation have finally to decide whether or not this agreement should be ratified. The right honorable gentleman the Under-Secretary of State in his speech, the ability of which I am glad to recognise, ridiculed the idea of referring this matter to a royal commission. The particular machinery which should be used for the investigation of the intricate matters involved might possibly not be most happily found in a royal commission. In the settlement of this treaty great points have been ignored. Certainly every other country was represented by some of the most distinguished men in science and in international law. We were represented—I do not speak, how could I? in terms of the slightest disparagement—by the very able Foreign Office officials, who represented and zealously represented, the interests of Great Britain in this matter. Four or five gentlemen in the Foreign Office, under the guidance and direction of the Foreign Secretary, settled a treaty which may have the most profound results, not only upon the commercial prosperity of this country, but even upon its national safety. Therefore I very respectfully venture to take exception to the vein of light irony with which the Under-Secretary for Foreign Affairs dismissed the question. I claim to speak on this question, though, with all due humility, because for very many years past I have made a study of international law, especially in relation to commerce, the matter being of the greatest interest to me.² It is in that capacity, and in that capacity alone, that I shall venture to lay before the House my objections to this proposal. Before dealing with the main grounds for my objections, I want, with due respect, to correct some very glaring inaccuracies into which the right honorable gentleman the Under-Secretary for Foreign Affairs fell. He represented to this House that food supplies, and indeed all things *ancipitis usus*, has been in the facile discretion of foreign powers. He said it was in the power—I hope I am not misquoting him—of foreign countries, a power which they had apparently freely exercised, to declare foodstuffs contraband of war. He vouched for that on authority which I believe never

¹ Although he was a member of the Liberal party, Mr. Atherley-Jones was vigorous in his opposition to the Government on the subject of the Declaration. In addition to his efforts in Parliament, he participated in a lively campaign before the public, writing open letters and addressing meetings. At a large non-party meeting held at the Cannon Street Hotel, London, June 28, to protest against the passage of the naval prize bill Mr. Atherley-Jones supported Mr. Balfour in making a strong attack.

² Mr. Atherley-Jones is the author of *Commerce in War*, London, 1905.

existed. He vouched for that on authority of no less distinguished publicist, as well as statesman, than the late Prince Bismarck.

Throughout the whole history of international law, for at least more than two centuries, I think I may say since the time of Grotius, the right to seize articles of food, except under limited conditions, has been denied by every civilised country. Except with two or three glaringly historical exceptions it has never been exercised. In the Napoleonic wars, in the early part of last century, it was with the wildest extravagance asserted by France, and that assertion was met by an equally extravagant assertion by Great Britain. But neither country attempted to act upon it, and both shortly afterwards withdrew it. The right honorable gentleman referred to what was done by France in 1884 during their war with China. It is true that France asserted the right to stop vessels proceeding to Hong Kong, and they seized them with the rice which was on board. But that was not on the ground that rice was a food supply, but on the ground that rice was currency. Lord Granville, who was at that time the Foreign Minister, violently repudiated the right which was asserted. The matter never came before a prize court for consideration and judgment. The war came to an abrupt end during the course of negotiations, and with the exception of that isolated case of 1884, we have no judicial authority on the subject, and it may be stated it is the only modern instance, apart from the instance of the Russo-Japanese War, in which any country has ever asserted the right to seize neutral ships carrying foodstuffs, unless they were going to a place of military or naval equipment. That is incontestible. My right honorable friend said Prince Bismarck justified that. It is true that Prince Bismarck was very glad to see this war proceeding at that time on the part of France against China, because it distracted that power as well as the attention of France from other affairs.

It is perfectly true that Prince Bismarck, in an answer imputed to him, said it was not a matter in which he would interfere, and that each nation must be the judge of its own requirements, needs and aims. But within a few months of making that statement, in a letter—and this is what the right honorable gentleman never told us—Prince Bismarck unconditionally withdrew every word he had written, and stated that the seizure of saltpetre in ships was a breach of international law. Saltpetre, I suppose, is still a main component in the manufacture of military ammunition, and Prince Bismarck was of opinion that saltpetre should not be subject to seizure. I have corrected the right honourable gentleman in a very grave error into which he apparently unwittingly fell, when laying this matter to the House. Von Bulow, the successor to Prince Bismarck,

held precisely the same view as Prince Bismarck in his Hamburg letter, and affirmed that article *ancipitis usus* should not be regarded as contraband unless the vessel were on its way to a place of naval or military equipment. The Under-Secretary for Foreign Affairs referred to the sinking of ships, and he stated with great emphasis that the sinking of ships was asserted as a right by the great continental powers of Europe, and he gave us instances to show that the sinking of neutral ships had been a not uncommon practice in past days. I challenge my right honourable friend, before the Russo-Japanese War, to produce a single case of a neutral ship having been sunk by a belligerent. He adverted to the American cases, and again my right honourable friend was not accurate in what he said. He quoted Lord Stowell in regard to the ships which were sunk, but those vessels were not neutral ships, they were hostile ships, and Lord Stowell went as far as any jurist in emphatically laying down, in awarding compensation for damages in those cases against the captors, that nothing justified the sinking of neutral ships by belligerents. I will now deal very briefly with this proposal, absolutely, of course, from a non-party point of view, as the result of my reading and study of the historical part of this question.

I do not deny what the right honourable gentleman emphasised in his peroration, that it is a great and noble idea to have an international prize court. It has been the dream of continental jurists, and if you read, as I have, the pages of French, German writers and Russian writers, you will find that all of them vividly express their great aspiration for an international court of appeal, by which they believe all international differences might be ultimately solved. Great Britain has all throughout the history of this question resolutely opposed the establishment of an international court; but now, for the first time in her history, as the result of the noble aspirations of my right honourable friend the Secretary of State for Foreign Affairs, sanction is given to the establishment of an international court. As a humble lawyer who has given his attention to this subject, I take no exception to the establishment of an international court, if we had a good code of international law which represented the general usages and the general interests of maritime nations. The science of international law is still in an inchoate state.

In the first place, it is the practice of particular nations; in the second place it becomes the usage of two or three nations, only after vicissitudes and the lapse of a considerable period of time does it ripen into the custom of the States concerned. You are endeavouring, by this convention, to precipitate the end to which international lawyers look, and it is precipitated when you instruct your agents, recognising that a code is necessary, to enter upon the matter in

a spirit of compromise. An international court of appeal is impossible, unless you have a code established which you can administer. Therefore you instructed Lord Desart and his very able colleagues to approach the solution of the sinking of neutral ships in a large spirit of compromise in acting on our behalf with respect to these matters. My objection to a court of international appeal is twofold. In the first place it arrests the hand of diplomacy. It may be that a belligerent country may be guilty of an act against neutrals which is not in consonance with the traditions and principles of maritime law, and at once, under present conditions, you have resort to diplomatic intervention. Diplomatic intervention may be useless, but I could quote various instances where representations made by the Government of the right honourable gentleman opposite were most effective. Now the aggrieved party will appeal in vain, because the Government will tell him this is a matter which has to be settled by the international court and we should be violating our treaty and our convention if we diplomatically interfered. I do not think the right honourable gentleman will deny that that must follow. There is another objection which I entertain to this international court of appeal. I will not refer to the fact that a gentleman from Guatemala is to be one of the judges who will compose this body, but what I do refer to is this, that the aggrieved shipowner or merchant in this country has, in the first place, to submit the matter to the decision of a municipal court of the belligerent country. If it decides against him he then has to carry his appeal to a foreign country before a tribunal which can not speak his language and acting on rules of evidence totally dissimilar to those which we have. He has to employ foreign lawyers, he has to carry his witnesses over to that foreign port, he has to fight against a powerful Government, the Government against which he is appealing, and he has also this still greater and permanent disadvantage, that he is fighting for something which the genius of the law in his own country told him he was always right in asserting, but which the municipal law of foreign States of Europe would tell he was wrong in asserting. Therefore, for those reasons I think that this is precipitate action, and although we lawyers do look forward some day to the establishment of an international court, you must have your international law in a more settled and fixed condition than it is at present, and it shall not be law manufactured by a spirit of compromise.

The next exception that I have to take—and I do not think the right honorable gentleman has answered this—is that in time of war—and I am now speaking of when we are belligerents—our position with regard to food supplies coming to this country is very much worse than it is under present custom law. I shall establish

that point, I hope, to the satisfaction of my honorable friends. What is the law?—and let the right honorable gentleman the Under-Secretary correct me if I am not stating the law aright. When I speak of law it has no sanction except that of usage. It is a mere custom of law, but it has very powerful sanction. It has this powerful sanction that the common sense of Europe has justified the law, and justified it so far that it has never, except in one or two extravagant cases, been violated. The law is that foodstuffs, unless carried to a port of naval or military equipment, can not be seized, I mean foodstuffs in neutral vessels. That is absolutely unequivocal, and I think unanimously recognised to be the law of Europe.

Mr. McKINNON WOOD. I do not think so.

Mr. ATHERLEY-JONES. The right honorable gentleman has the misfortune to disagree not only with me but every jurist. I may refer him to Hall, and to any of the well-known American works, and he will find in the pages of each of those works, categorically stated, that it has been the generally recognised law of Europe and of America that foodstuffs in neutral vessels are protected unless on their way to a port of naval or military equipment, or to the armed forces of the enemy. I challenge the right honorable gentleman, or any of his colleagues who may reply, to quote any passage which conflicts with the proposition which I lay down. What is the difference that the convention makes? The difference the convention makes, and I think anybody who is not a lawyer will appreciate the distinction in a moment, is this among others, but this great difference, it says, that if foodstuffs are going to a base—that is the word—in a neutral ship, they may be seized. We turn to find out what “base” means. There is a glossary or commentary attached to the Declaration by M. Renault, that is to be effective as the terms of the Declaration, according to the statements of the delegates and, I think, according to the statement of the Foreign Office. The commentary says “base” does not only mean base of nations, but means base of supplies. I really ask any honorable gentleman, or right honorable gentleman in this House, does he suppose that a naval commander representing a country at war with ourselves seeing a ship laden with provisions making its way to Hull or Bristol or Liverpool would not, in the interests of his country, at once feel it his duty to his country, in the interest of bringing the war to a successful conclusion, to lay hands upon the vessel, upon perhaps the unfounded ground that Hull or Bristol or Liverpool were bases of supplies for the armed forces of the enemy? I say that any naval commander who would fail to do that would be unworthy of being in the service of his country. Neutral States who may regard that as unjust would be silenced by being told that that is a difficult question of international

law which has to be decided, it may be some months hence, by the international tribunal. That, to my mind, appeals most strongly.

I ask honourable gentlemen who sit behind me to consider whether that article does not involve a serious menace to, I will not say the absolute safety of our country, but at any rate to the security of our country to some extent, and to the security of our people in time of war. No doubt any interference with our food supplies would be, even if they did not go so far as to involve famine, a very serious matter for this country. How was the matter met in the House of Lords? It was met in the House of Lords by this answer. Assume that you are right and that a naval commander would regard Hull or Liverpool or Bristol as a base of supply, what would be easier than to convey your goods to Havre and transship them from there under the doctrine of continuous voyage to your own country? I have endeavoured to ascertain the opinion not only of people who are competent to speak of this question in my own country but of those competent to speak in other countries. They referred me to M. Renault's explanatory clause which says the destination is not to be decided by the ship's papers, which is the good old customary rule, but that if there is fraud, and if the ship's papers are illusory, and if Havre is not the true destination, then the ship is liable to be seized. I can conceive that that is the view of many continental jurists with whom I have communicated, and that any transferring of the goods first of all to a neutral ship at Havre and thence under convoy to Great Britain would be a wholly impossible proceeding. The last subject that I desire to refer to is the question of the destruction of neutral ships. I have already stated neutral ships have never hitherto been sunk until the Russo-Japanese War. The American cases were those of hostile ships, not neutral ships. In the Russo-Japanese War undoubtedly merchant ships were sunk. Lord Lansdowne made very energetic representations to the Russian Government on that. What did the Russian Government do? Did they assert the right? On the contrary, Count Lamsdorff wrote an apologetic letter saying it shall not occur again. For two years there was no recrudescence of that outrage, and then, I think it was towards the end of the war, in the year 1903, there was a further case, and again representations were made by the Foreign Office, and again Count Lamsdorff wrote to say that again a mistake had been committed, and offered an apology.

Mr. McKINNON WOOD. Did they pay compensation?

Mr. ATHERLEY-JONES. It is not a question of compensation. The question is that we, the greatest civilized country in the world, are admitting and sanctioning the right to destroy neutral ships.

Mr. McKINNON WOOD. I thought the honorable member said that Russia acknowledged that they had made a mistake.

Mr. ATHERLEY-JONES. Certainly.

Mr. McKINNON WOOD. And yet the honourable member says they did not pay compensation.

Mr. ATHERLEY-JONES. I know many people who have acknowledged mistakes and not paid compensation. What does this sinking of neutral ships mean? There are certain illusory words in the convention to the effect that persons on board are to be conveyed to a place of safety. These are the conditions under which a naval commander may destroy a neutral ship. He may do so if he thinks his own ship would be in danger, or that the success of his operations would be imperiled if he did not do so. Assume that a commander met a passenger vessel on the high seas, and that that vessel afforded him some justification for overhauling and perhaps seizing it. Would not that naval commander say, "This vessel may convey communications to the enemy or may even be seized by the enemy; to prevent that contingency I will at once put it out of existence." Would any international court hold that to be an invalid excuse if the commander, on his honour as a naval officer, stated that he believed that the interests of this country in the prosecution of their naval campaign would have been prejudiced if he had not caused the ship to be destroyed? My knowledge of the legal judgments of the admiralty courts of most countries, including our own, leads me to the conclusion that the judgment would be in favor of the naval commander. What about the people on board? They are to be conveyed to a place of safety. What is a place of safety? The people are to be placed in the narrow confines of a man-of-war! Their effects may be destroyed, and they are to be conveyed in that ship to a place of safety. But while being conveyed to a place of safety the vessel conveying them may be sunk. Yet we have committed ourselves to a principle which throughout our whole naval history we have persistently, continuously, and emphatically repudiated. Does the right honourable gentleman deny that? Does he assert that we have ever given countenance to the destruction of neutral ships? One of our greatest living international lawyers asserted that it was a practice unknown to civilized nations until Russia adopted it, and he declared that it was contrary to the elementary principles of civilized States.

The ATTORNEY-GENERAL (Sir Rufus Isaacs).¹ Does the honourable member suggest that it has ever been done by the British Navy?

Mr. ATHERLEY-JONES. I suggest that the only cases were those during the French war which have been cited, and they were cases of American ships which were not neutral but hostile ships, trading

¹ Liberal.

under a license. And be it observed, Lord Stowell, before whom those cases came for adjudication, absolutely condemned in costs and damages the man-of-war for not having taken those ships to a port.

MR. MCKINNON WOOD. How does the honourable member account for the fact that 7 out of the 10 powers at the naval conference claimed the right to sink such ships?

MR. ATHERLEY-JONES. I account for it very easily. This country has ports all over the world. We have facilities for conveying our prizes to ports in almost every sea. It would be a gratuitous act on our part to sink a ship. But military powers like Germany and Russia have very few ports in the seas in which no doubt they would endeavour to assert the principle. I thoroughly agree with the proposal made by Germany some years ago that private property at sea should be exempt. That apparently can not be obtained, and it is not obtainable only through the action, right or wrong, of the British Foreign Office. The Under-Secretary of State suggested that the other side of the House were opposed to all conventions, and he supported that assertion by citing the case of Mr. Thomas Bowles, who was a member of this side. Do not let the honourable member run away with the idea that we are opposed to conventions or treaties. I at least should be one with him in every effort to secure our ends by conventions upon proper lines. I have endeavoured with absolute fairness and with the greatest respect to submit my objections to this Declaration. It is a very difficult position for a Liberal member to be in, because we feel that pressure is being brought to bear, and properly so, as to which lobby we should go into. But I would earnestly entreat the Foreign Secretary, I will not say to make this an open question, but that these articles, which have received criticism from far abler men than I, should be reviewed and another opportunity given to the House to express its opinion upon them.

MR. BUTCHER. I beg to move, as an amendment, to leave out from the word "That" to the end of the question, in order to add instead thereof the words "in view of the strong expression of independent expert opinion on the part of many important business and commercial bodies and of high naval authorities against the ratification of the Declaration of London, and in view of the fact that the Declaration, if ratified, will be binding on this country for at least 12 years, this House declines to proceed further with the naval prize bill until the whole question has been submitted to and reported on by a commission of experts to be appointed for that purpose."

It is seldom that there comes before this House a question of graver national importance, of greater complexity, and of a more entirely non-party character than that which we are considering to-night. The Government themselves have recognised the excep-

tional gravity of this measure. It is customary to ratify a convention such as the Declaration of London without consulting Parliament, but in this case the Government have recognised that so far-reaching an innovation as is contained in this code should not be foisted upon the country without the sanction of Parliament, and they have given a pledge to the House that they will not ratify the convention until Parliament has given its approval. Having given that pledge, the Government have adopted a most unfortunate course in refusing to allow an unbiased expression of opinion on the part of the members of this House. If ever there was a question before the House that required the free, instructed, and unbiased opinion of members it is the question we are asked to vote upon here. What are we asked to do? We are asked to pledge ourselves to two momentous decisions. We are asked, in the first place, to sanction a code of international maritime law, which code will be irrevocably binding upon us for at least 12 years, which in many important respects is admittedly imperfect and incomplete, which is expressed in language almost studiously vague and ambiguous, and which in some vital points widely departs from those rules and regulations for which we have uniformly contended, both in our prize courts and in our diplomacy. We are asked, in the second place, to set up an international prize court to administer the code embodied in the Declaration, a court on which this country will have 1 member out of 15, on which our dominions will not be represented at all, and of which the rest of the judges will be foreign jurists largely out of touch with the juridical conceptions both of this country and of the United States.

When a proposal of that sort is made one would naturally expect that the Government making it would be supported by a vast and preponderating consensus of expert opinion. But how do they stand? On the one side you have the Government and their advisers of the Foreign Office. No one disputes their absolute sincerity, but there is such a thing as pride of parentage, and I venture to think in this case that we have seen to-night the Under-Secretary for Foreign Affairs exhibiting a somewhat unduly favourable view of his progeny. What about other departments of the Government? Let me ask, and I should like to know before this debate closes, were Naval Lords of the Admiralty consulted in any way before this solemn Declaration was signed by our representatives in London? I suppose we shall hear later on whether they were. We have certainly not heard what their opinion is.

It is said—I believe it was said in another place—that the Board of Admiralty was consulted at some stage or other—I do not know what. But in a matter of this sort, essentially a naval question, essentially a question for experts both naval and others, would it not

be right and proper that we should have the advantage of knowing what the views of the naval experts of the Government were, views which up till now have been sedulously withheld? There is no difficulty about any of the opinions of the experts of the Foreign Office—not at all. Though I wish to treat this as a non-controversial and non-party matter, I do say that as we have heard the opinions of the Foreign Office, would it not be right, when this House is asked to take a step of such a momentous importance, that we should also know the views of the expert advisers of the Admiralty. I wish to admit to the fullest extent what support the Government have in this matter. They have some—not very much—external support; some jurists of acknowledged eminence; and, of course, they have had the advantage of getting the acquiescence of the majority of the colonial premiers. I do not wish to say one word as to the position of the colonial premiers. We have not got a full report before us of the proceedings of that conference. We do not know by what arguments they were guided, or what arguments the Foreign Office used, and it would be premature, and I also think discourteous, on our part to venture to criticise those arguments until we are in full possession of them. We do know this, that two representatives of Australia were instructed to come to that conference for the express purpose of showing the grave danger to this country of some of the provisions of this Declaration. The premier and another delegate from Australia did attend the imperial conference and give solid grounds for their objections, which I venture to think were never adequately answered, and which they never withdrew.

Those are the opposing forces on the one side. What are on the other? I do not think I use the language of exaggeration when I say that on the other side there is an almost unexampled consensus of independent expert opinion deeply, strongly opposed to this Declaration—the opinion not of this or that class, but of almost every class concerned. We have naval, business, commercial, shipping opinion manifested in an almost and unusual manner against it. We have the opinion of jurists of the highest eminence, including such a man as I know my right honorable friend would be glad to recognise as one of the most prominent in his class, Professor Holland. I am not going to enumerate the forces which are drawn up against the Government, but it is well to remind this House and the public that you have against this Declaration the chambers of commerce of almost every maritime and business center in this country; the chambers of commerce of London, Birmingham, Leeds, Bristol, Liverpool, Glasgow, Plymouth, Portsmouth, Sunderland, Swansea, and Belfast.¹

¹ All over the country meetings were being held by chambers of commerce, shipping and insurance associations, at which resolutions were adopted opposing the ratification of the Declaration. A letter of protest to the Prime Minister and Foreign Secretary from fifty-three such organizations appears in *The Times*, London, for June 27, 1911.

Can any other occasion be brought up by the right honorable gentleman, or any one who follows—where there was such an absolute consensus, not of party men—for this is a matter of the business life of the country. Those concerned have given their opinion, not as party men, but as men of practical business experience and common sense. Can any other occasion be brought up in the history of modern times, when Government proposals were opposed by this enormously strong opposition on the part of the business community, and where the Government yet persisted in going on in the face of that opposition? But I have not enumerated all or anything like all against it.

I spoke of chambers of commerce. This Declaration is also opposed by the United Kingdom Chamber of Shipping, the ship-owners of the great ports of Bristol, Cardiff, Glasgow, Leith, Liverpool, and also the shipowners of Manchester and the North of England. There is one class I have not mentioned; that is the class to whose opinion above all we ought to pay respect to. I refer to naval opinion. No less than 157 admirals have put their signature to a strong protest and condemnation. Let us remember that these men represent that service that when others are sitting in their armchairs will have to fight for the protection of the ships on which our fate will depend. In that state of things I venture to put down my motion, and to ask the House not to give a definite opinion on the present occasion either in condemnation of the Government or in affirmation of the views of those who oppose the Government. I ask the House to suspend its judgment until we have clearer and fuller information. This I venture to think, can only be obtained by a commission of experts drawn from all classes whose opinion is valuable, including the opinion of our self-governing colonies. I do not suggest that this commission is to deprive this House of the exercise of the opinion of its members. I think that would be a shameless abnegation of our responsibility. That commission will be asked to advise. It rests with us to decide.

We have not, at any rate at the present moment, the means of forming an opinion upon this matter of great difficulty and complexity. Will any honorable gentleman on the opposite side of the House tell me that he is so entirely and absolutely acquainted with every detail of this controversy that no facts, no argument, can be brought forward that would affect his judgment? After all, in a question of this sort, the assertion of infallibility is nothing but a confession of incompetence. Therefore I think we are entitled as members possessing responsibility in this matter to this House and to the country, to ask that the final decision shall be deferred until we have that fresh light and that fresh knowledge which we can get from such a commission. What can be said against it? One argument has been suggested. I think it is a bad one. It is that there has been a considerable delay

already, and that a further delay would be useless. In answer to that is it not fair to say that delay could not be possibly harmful? If you delay this decision for six months you do not destroy the Declaration of London. You do not abandon your right to ratify it if you like. On the other hand delay might be exceedingly valuable in saving us from disaster. In a case of this sort better, I think, six months of delay, with the certainty of a reasoned verdict, than an immediate judgment with the possibility of national disaster. It would hardly be right for me to urge this view upon the House, and to point out the undeniable existence of this vast body of opinion opposed to the Government without pointing out also that that opinion, that these objections, are founded upon solid grounds.

In view of the speeches which have been already delivered I think I shall be able to shorten my observations, but I shall endeavor to point out some unanswerable objections, as I think, to the ratification of this Declaration. I will not touch upon the question of the composition of the prize court. It has been touched upon by my right honorable friend the member for Edinburgh and St. Andrews Universities, but it is obvious that grave objections can be taken to it. I propose to confine my observations to the code contained in the Declaration of London. The first observation I make about that code is that it is almost studiously vague in its terms; so vague is it that the Government themselves tell us that it can not be understood without calling in the aid of the general report of the drafting committee, M. Renault's report. I am bound to say that the attitude of the Government towards M. Renault's report has been one of a somewhat singular character. We were told in the first place, earlier in the session that this report without any further international convention must necessarily be read into, and be regarded as an authoritative exposition of, the Declaration of London. That is what I was told by the Under-Secretary. Eminent jurists controverted that view. At the imperial conference the other day the Foreign Secretary said he would not ratify the Declaration except with the stipulation that this report of M. Renault must be treated as an authoritative exposition of the Declaration. I want the House to consider whether it is right that that report should be regarded as an authoritative exposition of the Declaration. Upon that authorities of the highest character fundamentally differ. Let me tell the House what Mr. Arthur Cohen says in a lecture delivered at University College:

The Declaration, unless supplemented by M. Renault's report, is vague, defective and incomplete.

Then he goes on:

It would be unsafe to ratify the Declaration until the report is in some way embodied in the Declaration and made binding on the international prize court.

What is the view of another great legal authority, Professor Holland? In an address to the British Academy he says:

It would be calamitous should a practice be introduced of attempting to cure the imperfect expression of a treaty by tacking on to it an equally authoritative reasoned commentary. * * * It would be *obscurum per obscurius*, a remedy worse than the disease.

Is not this a matter upon which we should have further light? Which of these two eminent gentlemen is right and which is wrong? It is in that state of things that this House is asked to say that the ratification will be entirely satisfactory, and that we must express immediate approval.

The vital question for us is this: How are our foodstuffs, in time war, brought in neutral ships likely to be affected by this Declaration? The right honorable gentleman the Under-Secretary for Foreign Affairs spoke of the effect of the Declaration when we were neutral. I think a good many defects of this Declaration are to be found in the fact that the Government approached this question far too much from the point of view of our position when we were neutrals and far too little from the point of view of the position we should be in when we were belligerents. Many of the defects of this Declaration are due to that fact. The right honorable gentleman claimed many advantages from it when we were neutrals. I do not admit them. I think it would probably be found, as many persons of capacity believe, that even when we are neutral we should be worse off. But supposing the right honorable gentleman was able to prove conclusively, as he attempted to do, that there were other advantages in this Declaration, I say if it had but this one fatal defect of seriously injuring our food supplies in time of war, then this House should refuse its ratification.

There are three points of view of great importance as to the effect upon our foodstuffs. First, there are the express provisions of the Declaration as to contraband; second, the express provisions as to the sinking of neutral ships; and, third, the silence of the Declaration as to the converting of merchantmen into warships on the high seas. As to the matter of contraband, I agree with the right honorable gentleman, it is most important for us to ascertain clearly what our position at present is, as to the supply of foodstuffs carried in neutral vessels. I think my honorable friend who has spoken has laid down the law with absolute clearness, when he said that the general modern practice of nations for a hundred years has been to treat food, not as contraband, liable to seizure in any circumstance, but as conditional contraband liable to seizure only when it is proved to be intended for the armed force of the enemy. We have the opinion of one Under-Secretary to-night; let me read the opinion of another Liberal Under-Secretary for Foreign Affairs, a man whose author-

ity as a jurist and a statesman none of us would dispute. I refer to the right honorable James Bryce. He said from his place in this House on 11th August, 1904:

Food by the general consent of the nations was not contraband unless it was clearly proved to be intended for military or naval purposes.

Does the right honourable gentleman dispute the accuracy of the statement of Mr. Bryce? It has gone unchallenged in the House of Commons until to-day, and not a single jurist or any one else has challenged it until it was challenged by the Under-Secretary this afternoon.

The Under-Secretary for Foreign Affairs called me to task for some passages in a pamphlet which I wrote upon this subject. Since the right honourable gentleman made his speech I had the opportunity of refreshing my memory. I looked at what I had written, and I adhere to every syllable I uttered. I called attention in the clearest terms I could command to the fact that two attempts only were made in modern times in which other nations had claimed the right to treat food as absolute contraband. I pointed out that the claims had broken down, and that food had not been treated in modern times as absolute contraband. What is the fact? The right honourable gentleman, in answer to a question in this House some time ago, said that there had not been one single case in the last 30 or 40 years in which food was condemned as absolute contraband. As regards the case of France in 1885, that was dealt with by my honourable friend who preceded me; and as regards the case of Russia in 1904, that precedent shows that although Russia did claim the right to treat food as an absolute contraband, the United States and ourselves protested, and that claim was not proceeded with. That being the state of the case without the Declaration, how do we stand with the Declaration? As already pointed out, you find in the Declaration, not merely an invitation to a hostile commander, but a justification for a commander to capture every cargo of foodstuffs coming in neutral ships to this country. All he has to say is, "This ship is destined for Bristol, Liverpool, Newcastle, or elsewhere, which must be a base of supply for the army, and I would fail in my duty to my country if I failed to capture it."

The Lord Chancellor said the words "base of supply" meant a port which was actually a magazine for war or actually a place of equipment for war. What an unfortunate thing that the Lord Chancellor, was not consulted before this Declaration was signed, so that we might have some clear and distinct words which might have prevented this deplorable result. The words of the Declaration are as wide as they could be. Perhaps it might be interesting to know what view a German distinguished officer takes as to the mean-

ing of "base of supply." Let me quote the opinion of General Baron von Gotz in a book he wrote on the conduct of war. He says:

In western Europe, the dense network of railways allows of reinforcements and supplies being brought up in a few days from the most remote parts of the country. It even obviates the necessity of restricting the base to one district, the whole area of the country becoming the base.

That is the German view, and it is also the view taken by General von Kammerer. He says that owing to railways the meaning of the word "base" has been altered. To Germany and the continental powers the provisions of the Declaration in this respect matter not. These countries are largely self-supporting. To us this matter of sea-borne food is a matter of life and death. We produce only about one-fifth of the food supply we want ourselves; the rest is brought to us by the sea. Food supplies are borne into this country at the appalling rate of £484 per minute. Anything which would materially stop this food supply in time of war would be ruin. Let us not be told that neutral ships will not be valuable in bringing in food supply. Let us grant that the proportion of food brought in neutral ships is only 10 to 15 per cent of the total amount now. Is it not certain that when war broke out and our own ships carrying our own goods were liable to capture, Declaration or no Declaration, we should necessarily have to rely to a far larger degree upon neutral ships, perhaps to the extent of 30 or 40 per cent, and it is this source of supply which under the terms of the Declaration you are going to destroy.

One word about the sinking of neutral ships. Capture is not the only risk which neutral vessels carrying foodstuffs would be subject to under this Declaration. It is equally and absolutely certain that almost every foreign commander would be invited and justified under this Declaration, not only in capturing, but in sinking every neutral ship carrying a cargo of food to this country. What has been our practice in the past? We have the words of the Secretary of State for Foreign Affairs in the instructions he wrote to Sir Edward Fry at The Hague, and he lays down very clearly what our practice is. He said:

Concerning the right to destroy captured neutral vessels, the view hitherto taken by the greater naval powers has been that in the event of its being impossible to bring in any vessel for adjudication, she must be released. * * * The British prize courts have held that to be the law for at least 100 years.

That is the view which we say is the view of the greater nations. How do we propose to deal with that by the Declaration of London? Whenever a foreign hostile commander comes across a neutral vessel carrying food to this country, he may be afraid that putting on a prize crew would interfere with the success of his operations and under article 49. and he would say, "I can sink you if the success of

my operation is likely to be interfered with by putting on a prize crew." And sink that ship undoubtedly he would. I would like to know whether Admiral Slade, our distinguished representative at the naval conference, has altered his view. He spoke in strong terms against sanctioning any words in this Declaration which would allow a hostile commander to urge such excuses for sinking a neutral prize, as that he could not spare a prize crew. He said it would be disastrous. Does he hold that opinion still? Is it not obvious that under the terms of this Declaration the mere inability to spare a prize crew would be held to be ample justification for sinking neutral ships? Let the House remember that, though in the interest of our possible foreign enemy article 49 of this Declaration would be of no use to ourselves, because whereas our foreign enemies could say "we have not a port handy to take ships to for adjudication, and in consequence it would interfere with the success of our operations to take the ship there and therefore we would sink that ship," in our case, with our many ports all over the sea, we would not have that excuse, and we would be bound to take the ship for adjudication to a port.

There is only one other question in connection with this Declaration that I wish to refer to and that is the conversion of merchantmen to warships on the high seas. It is true that there is no recognized international law on the subject, and the Government have told us over and over again that although the Declaration is silent upon this point we are no worse off than we were before. I have heard that argument several times. I ask the First Lord of the Admiralty whether that is the view of the Government?

Mr. MC KENNA. As belligerents.

Mr. BUTCHER. That is an entire misapprehension, because if the prize court is set up this is one of the very questions it will have to deal with, namely, the question of the legality of the conversion of merchantmen to warships on the high seas. The Under-Secretary for Foreign Affairs said that under the terms of the bill we should be no worse off in this respect than we were before. This is a question which the international prize court will have to deal with, and how? It will have to deal with it according to the principles of justice. In this matter, instead of having our hands free and being able to protest and bring every pressure in our power against any power that asserts this right to convert merchantmen on the high seas into warships, we shall have our hands tied, and we shall be able to utter no protest or take any retaliatory steps when at war because this question has to be left to the decision of the new court. No wonder that the German newspapers have been expressing their unconcealed delight at the prospects of the speedy ratification of this Declaration.

The Cologne Gazette said the other day that there appeared to be no doubt that this Declaration would shortly be ratified, owing to

the great party majority commanded by the Government. I think I have now given some reasons for thinking that there are grave objections to the immediate ratification of this Declaration, which will involve us when we are belligerents in serious peril in regard to our food supply, both in regard to what the Declaration contains as well as what it does not contain. I think I have made out a case for asking for further information before the House comes to a final and irrevocable decision. The Prime Minister said the other day that he would feel it his duty to carry the second reading of this bill by the aid of a purely party vote. It is unfortunate, strange, and I would almost say unworthy that the Prime Minister does not find it possible to trust his followers on a matter of such great and vital national importance. I hope that even before this debate comes to a close there will be an alteration in that decision. Be that as it may, I hope and desire that the House, in coming to a decision upon a question of such great and vital moment to us, may act not as an assembly composed of sects or of parties, but as the representatives of a united people; animated by one common desire to act in the best interests of their country as a whole.

MR. SHIRLEY BENN. I rise to second the motion which has been moved by my honorable friend the Member for York. I do so thoroughly alive to the danger involved in regard to the establishment of an international prize court if this motion should be passed. I am a believer in the international prize court, but not in the Declaration. No one who has had to deal with shipping during the wars of the past 25 years can deny that in certain cases there are benefits obtained for our shipping by this Declaration, but the evils which it recognises and legalises are far greater than the benefits. If our representatives at the conference had been able to carry out the instructions of the Foreign Secretary there would have been comparatively few objections to the Declaration, but the concessions which they found themselves obliged to agree to in order to get unanimity have made the Declaration of London extremely dangerous to those of us who look at this question from a mercantile point of view. After the speech of the learned gentleman in the House to-day I feel it may perhaps seem rather strange that I, who am not a lawyer, should address the House on this question, but I do so as a merchant who has dealt with shipping, who has to deal with it, and who knows the dangers we have to contend against.

My first objection to the Declaration of London is in regard to vessels carrying foodstuffs, which I regard as a vital matter. If I were shipping grain from America and I found that the English market was requiring grain, and that the price was good, I should naturally endeavour to ship it over to England. The first thing I should

do if England was at war would be to take legal advice as to whether there were blockades in force, and ascertain whether the grain I was going to ship was contraband or not. I expect I should be told that under the Declaration of London foodstuffs going to any fortified port or to any place that might be the base for the supply of the armed forces of England would be contraband, and that would make grain contraband. If I asked what was a base, very likely I should be told that we had no real authority as to what a base is, but if we take a foreign authority who has carried weight in Europe, if we consider what Jomini said in his *Précis l'Art de la Guerre* in 1838, we shall find that he describes the base of operations as—

a place from which a force, naval or military, draws its resources and reinforcements, that from which it sets forth an offensive expedition and in which it finds refuge at need.

We know that here in England, with the vast railway system we have got, there is no port in England that would not be used to supply our armed forces. Therefore grain would be contraband, and I think I may say that this is the first time that grain has been recognised as contraband unless going to a port either besieged or blockaded or intended for the service of the enemy. One case in which a country tried to starve another country into submission was our own case in 1795, when that celebrated order in council was issued instructing British cruisers to capture all vessels going into any French port that had food supplies on board. Our captains captured some, but what was the result? The United States complained that it was not legal, and the matter was left to a mixed commission, and that commission decided that it was not legal, and England had to pay not only for the value of the goods, but also for the loss of market and detention. The second case was the one referred to in the House this afternoon, when France, in her war with China, declared that any rice going to any port north of Canton should be considered as contraband. What was the result? Lord Granville, the Liberal Foreign Minister, promptly issued a proclamation to the effect that no decision of a prize court carrying out such a doctrine would be recognised by England, and the result was that it was not carried out.

We are told that we need not worry as to whether grain is going to be contraband or not, because we shall always have the command of the sea, and we shall be able to bring it in. But there is a great difference between bringing in contraband stuff and bringing in stuff that is not contraband. If I were shipping grain from America I should have great difficulty in the first place in getting a ship to take contraband, and in the second place I should want to get a fast ship, which, of course, means an expensive ship. I should have to pay a war premium, and if one judges from what was paid during

the Russo-Japanese War the amount would be from 25 to 30 guineas per cent, or about one-fourth the value of the steamer. In addition, you would have to pay war risk on your cargo. If, on the other hand, grain was not made contraband of war coming into England, the war issues would be very trifling, and something like 2s. 6d. per cent would cover the risk of vessels carrying stuff not contraband. This was the case after the British protest had been made against the Russian Government seizing and sinking neutral vessels.

The Under-Secretary for Foreign Affairs this afternoon suggested that if we were perhaps losing something in connection with our foodstuffs we were gaining a great deal by having a free list and by knowing that we could bring in raw material for our factories, and so find work for our people. I can not see that there is anything very great in having this free list if we are belligerents, because if our navy is strong enough to bring in our foodstuffs it will be strong enough to bring in our raw materials. Cotton has been referred to in this respect, but I think the only case of cotton being considered contraband was in 1861, during the Civil War in America, when the Confederate Government applied this rule to all the cotton grown in the Southern States, and assumed the cotton in the South as Government property, and used it as the means of obtaining money by which to carry on the war. As Government property it was, of course, liable to capture. I feel this is the most dangerous point of the whole of this Declaration, because, whether we retain the command of the seas or not, the Declaration must hit us. If we retain it, we bring in contraband at an enormously high price which would make the cost of food to the workingmen of England so high that few would be able to buy it. If, on the other hand, we do not retain the command of the seas—and, unfortunately, as we all know, in many great wars in the past we have failed at the commencement to hold our own, and it might be we might lose control of the seas for the moment—no contraband could come into England, and, if it did not, we should be face to face with a famine and starvation, and England might be brought to her knees and have to agree to terms that an enemy might impose upon her.

The second point on which I wish to say a few words is the question of the sinking of ships. It is difficult to understand how we can ever agree to that article. It has always been recognized that property in the ship never passes to the captor until he has brought it into port and it has been adjudicated upon and a decree of condemnation passed by a competent court. We were told America was in favour of the sinking of ships. She may be in favour of it, but it is not what she did during the Spanish War. The ships captured were brought into port, but they were not allowed to stay in the hands of the men who brought them in. They had to be handed

over pending the decision of the court, as to whose property they were. Under the present arrangements a ship can be sunk at sea before it is known whose property it is. I suppose, because we have allowed things to happen in the past, it is thought we will agree to anything. If we go back to 1872, we find a German general undertook to sink six British merchant ships in the Seine. He told the captains of them, after they had discharged their cargoes, that he would pay the value of the ships. The captains said: "No." The general then said it is a breach of neutrality, and undertook to fire upon those ships, some people say, while there were British sailors on board, and to sink them in order to prevent French gun-running up the river. The matter was tested, and Prince Bismarck, in defending the proceedings at Duclair, said:

I maintain the measure in question, however exceptional in its nature, did not overstep the bounds of international war-like usage, because the report shows that a pressing danger was at hand, and every other means of meeting it was wanting. The case was, therefore, one of necessity, which, even in time of peace, may render the employment or destruction of foreign property admissible under the reservation of indemnification.

It seems, therefore, they could take what they like and pay for it. If I sending a British ship out to the East laden with cotton goods and agricultural machinery and we were a neutral power, a belligerent would seize that ship, and, if he thought it was likely it would give information to his enemy, he could sink it. All we could do would be to go into the prize court, and, if we were not satisfied with its decision, go on to the international court. Then all the captain has to do is to prove he illegally sank the ship, and no question can be raised as to whether it was legal or not to seize it. No punishment is to be meted out to a captain of a foreign man-of-war who seizes and sinks an innocent neutral except that he is to pay the cost of the neutral.

Mr. McKenna. How does that differ from the present practice?

Mr. Shirley Benn. It is not usual for civilized countries to sink innocent neutral ships which are not carrying contraband.

Mr. McKenna. The honourable gentleman has just given a case in which innocent ships were sunk.

Mr. Shirley Benn. I gave the case of 1872, when England failed to take the opportunity which she ought to have taken. That is the only case on record. Generally speaking, no country will sink an innocent vessel she captures at sea unless there is contraband on board, and not even then without compensation.

The third and last point on which I wish to say something is the conversion of these steamers when at sea into men-of-war. In olden days, it was supposed you could always tell the difference between a merchant ship and a man-of-war. You could tell then what could

be used for warlike purposes, but to-day many liners are so adaptable that they can be turned, at very short notice, into men-of-war. The American Government during the war with Spain acquired the *St. Louis*, *St. Paul*, *New York*, and other vessels and turned them into cruisers. Therefore, when you get these big liners out thousands of miles from their native country, it will be very hard for people when they call at outlying ports for coal and supplies to say whether they are merely supplying an ordinary mail steamer or a wolf in sheep's clothing. It seems a great pity we could not hold out persistently that no vessel should be converted into a man-of-war unless it is converted at a home port and sails from that home port as a man-of-war with the necessary flag. I am not looking at this matter at all from a political or party point of view. I merely look upon it as one who has had to deal with shipping and who believes this Declaration of London will be extremely bad not only for the trade of England, but also for the food of our people. I have been told that we, having 50 per cent of the carrying trade of the world, America could not supply us in their own ships in case of war. But anyone who says that can hardly realize what America can do, because if America wants to send grain over here she will get the ships, and if England should be at war and should be getting worsted I rather think one of the very first things America would do would be to purchase the necessary vessels so as to secure the trade of England. She will do it very quickly indeed. I saw how it was done during the Spanish War. An act of Congress was passed enabling foreign ships to be bought, and an act of Congress might be passed to-morrow to enable America to buy more foreign ships in order to carry goods. If I am right in my contention that this is bad for our country, I can not believe that this House will be willing to agree to any arrangement which might not only diminish our power but might paralyze our energies at the very moment when it might be most necessary for the independence of our country and the security of our Empire that those powers should be exercised to their utmost extent.

SIR G. SCOTT ROBERTSON. This House, I am sure, has been very interested in the speech of the honourable member who has just spoken, not from the point of view of a lawyer. Practically, except for the opening speech, lawyers have monopolised this debate, and we wanted very much to hear the opinion of the shipowners and the shippers. I am very grateful to the honorable member for having cited the instance of the sinking of English ships by the Germans in 1871 without the payment of any compensation.

Mr. SHIRLEY BENN. Compensation was paid.

SIR G. SCOTT ROBERTSON. At any rate the example quoted is an extremely interesting one and has an important bearing on this dis-

cussion. This amendment is intended to postpone not only this discussion but the ratification of the Declaration of London. I hope the House will not, for an instant, entertain such a suggestion. As the honourable member who last spoke truly observed, the question has already been thoroughly threshed out this afternoon, and I predict that during the rest of to-day's sitting as well as to-morrow the speakers will simply be obliged to repeat in other words what the ingenuity of lawyers and others may suggest the facts and counter-facts which have been brought forward this afternoon. It has come to this pass. There is the lunge, the guard, and the ripost. The fact is neither side is going to acknowledge a hit, and they are simply going to repeat during the next few days what has already been said this afternoon. I should like first to congratulate, very sincerely, the Under-Secretary for Foreign Affairs, who opened this debate, and who put the case so fully, so clearly, and so convincingly that, from our point of view, he has left very little for us to say.

I will only answer something which fell from the right honourable and learned gentleman the member for Edinburgh and St. Andrews Universities, who deprecated very strongly the introduction of party politics into this question. Is he not a little late in the day with that protest? Do not we all know what happened last December? Do we not know the little articles asserting that the Declaration of London was a sword for Unionists to wield? Do we not remember how our constituencies were flooded with pamphlets suggesting that if the Declaration were ratified it would condemn the people of this country to be fed like monkeys on nuts? It surely is a little late to declare that this is not a party question after such a weapon has been used. The fact is that weapon has been proved to be blunt and useless. It is to be thrown away and another plan to be adopted. I do not think we are very likely to be readily convinced of the sincerity of such a manoeuvre. I should like to say one or two words in reply to what fell from the honourable and learned member for North-West Durham (Mr. Atherley-Jones) in the very dignified, but, if I may say so, very didactic manner wherein he laid down certain dicta, and proved the point no doubt to his own satisfaction by serious misquotation. First of all he told us that food had never been admitted to be contraband by any jurists at all. I think he said that that line had been fixed for 200 years. He was interrupted by the Under-Secretary, and he replied that the point had not been disputed by jurists. I should like to say that Sir Edward Fry, who, I suppose, will be admitted to have some claim to be a jurist, declared at The Hague Conference, "that the international law of to-day is hardly anything but a chaos of opinion often contradictory of the decisions of national courts based on national law." That I think, is the true

state of the case. It is absolutely certain that there is no finality, no general agreement as to what is international law. One can easily see that, if one wanted to, simply by analysing the controversies which have been going on in the newspapers and by the extraordinary pamphleteering energy which has been displayed. Even at the present moment in this House of Commons there is not anything like a common agreement as to whether food is contraband, absolute or conditional or not, and another point upon which there is no real decision is whether ships can be sunk at sea or not legally. Of course on this last point there is no decision in any British court which has ever gone to confirm the idea that ships can not be sunk at sea. You may even go further and say it is exactly the reverse of that, and that it has always been laid down that ships may in case of necessity be sunk at sea, but in every single case compensation must be paid. On those two questions alone the house will see what a difference of opinion there is as to what is international law. Leaving the lawyers, I should like to come to the shippers, who are the actual people interested in this question, and I should like to quote the resolution passed by the Liverpool Steamship Owners Association in 1904. It runs as follows:

That, in consequence of the uncertainty existing among British merchants, shipowners, and underwriters as to what is contraband, the position is most detrimental to the interests of the country and the Empire. Therefore, this association begs to impress upon His Majesty's Government the vital necessity of an immediate and satisfactory settlement of the question of what is and what is not contraband.

That is in 1904. And yet we are told here that the law has been fixed and has been perfectly well known for a couple of centuries that food can not be considered contraband of war. The honorable member for York and the honorable member for Durham tried to confute the well-known instance of 1885. There we know that France declared rice contraband of war. Lord Granville protested against it, and Prince Bismarck when asked pointedly, officially by the Kiel Chamber of Commerce his opinion on this subject, gave an answer which is very well known that he upheld—it came to that in effect—that he upheld the position of France on the ground, of course, that if you increase the difficulties of the enemy you naturally shorten the duration of the war. The honorable member for Durham has tried to get out of that by saying that this statement was withdrawn by Prince Bismarck. Prince Bismarck never withdrew this statement at all. What Prince Bismarck said was simply this, that in a specially given case—saltpeter—to that extent it was not to be considered contraband of war. But this is the important point of misquotation, quite unconscious, I am sure, by the honorable member for Durham. He said that Count von Bulow supported the position

that this opinion of Prince Bismarck had been withdrawn. I want to give exactly the very words used by Prince von Bulow in the Reichstag. They are these:

Contraband of war is a matter of dispute, and with the single exception of arms and ammunition is determined as a rule with reference to the special circumstances of each case.

That is the exact quotation, which was not intentionally garbled, of course, but it did give a wrong impression to this House. I happened to have a controversy with Lord Desborough at the time about this very matter, so I remember it. The point was this, Did the prince say what he was alleged to say in so many words or not? As a matter of fact, Lord Desborough rather reversed the ordinary order of things. He argued first of all that what Prince Bismarck said was never the view of the German Government, and after that he argued that it was withdrawn. I was quite easily able to show by chapter and verse that he was wrong on both points. This, of course, is a comparatively small matter, but its special bearing is this, that Lord Desborough, by his personal influence, did actually quite sincerely make a misstatement, and so helped or induced the associated chambers of commerce to pass a vote against the Declaration. That is specially the point I wanted to make on that matter.

I agree with every word of Sir Edward Fry. I agree that the Declaration clears up what is a perfect chaos at present of international law, and I believe it does give us a way out of that chaos, and it does that without diminishing in scope or weakening in application any single belligerent right.* I believe it does give the shippers and shipowners what is the utmost which can be come to as an international agreement on maritime law by all the powers, and, therefore, it lets them know what they may do in time of war, and in regard to neutral vessels tells them what rights have generally been agreed upon that they may exercise; and if these rights are infringed it gives them a right to compensation. I contend that this is a very important matter, indeed. It has been mentioned to-day that there are certain matters which have not been provided for in the Declaration. That is quite true, and one of these is the transformation of merchant ships at sea into warships. It has a theoretical and practical aspect. Theoretically, of course, we are all in favor of merchant ships only being converted into warships in the territorial waters of the power whose flag they fly. That is very natural for us, because we have territorial waters and ports and coaling stations all over the world. Naturally and theoretically also, we can reasonably understand that Germany would take exactly the opposite point of view. She has very little territorial water in Europe, and out of Europe little or no territorial water, no ports, and also no coaling stations. Obviously, therefore,

there was a conflict of opinion there. We very properly sought to maintain a position of enormous advantage. Of course, we should have taken up the same attitude as Germany if we had been in her position.

There is another aspect of the case. Practically we do not know, for instance, what the international court will decide. I myself am of opinion—I think the First Lord of the Admiralty does not agree with this point—that that is a question which will have to be left to the international prize court to decide, whether a merchant ship can legally be turned into a warship on the high seas or not. The world is against us on this point, and we know that if we are at war to-morrow any power could exercise this right. While we are bound by our own declarations and assertions we are debarred from exercising it, therefore we are in a position of inequality. Obviously if the court were to decide in our favour—I suppose theoretically we should say that suited us—but if it decides against us we are in no worse a position than we are at present. In fact we stand to win, and we can not lose. That is not altogether an unsatisfactory position. Then we possess in merchant ships fit to be converted into war vessels twenty times as many as any other nation in the world, and, secondly, the number of ships belonging to a foreign power which are capable of being converted in this way into warships is necessarily very limited. I am not going to ask the First Lord to divulge any secrets, but I am quite certain that every single one of these ships must be known to the Admiralty if the Admiralty is worth its salt. In the case of war breaking out, would you attach a cruiser to each ship? You might, but much better not. Why not equip your own commerce destroyers, your own swift liners, and set them to follow and shadow and hunt these special vessels? At present, of course, supposing these vessels came in contact with several of our own liners in mid-ocean under our rule, we should say “No; we can not capture these liners because they are more than 3 miles from home.” So I contend that if the court were to decide against us, or if we felt it was going to decide against us, the proper plan would be for us to accept our opponents’ position. I am sure in that way the great number of vessels that we should have—three or four to one if you like—would easily be able to surround a vessel coming out in the hope some day of converting herself and then, at a given moment, I suppose our commerce destroyers in perspective would throw aside their merchantman manners and, after a time, no doubt, thank God for their meeting. That seems to show either way that we have an advantage. Were the position theoretically in our favour in the international prize court, that is an advantage too, but if it were otherwise we should still easily hold our own and play that game very

successfully indeed. The other questions of nationality and domicile need not be discussed. They are very interesting, but as a test of inequality perhaps one need not go into them very fully. The conference appointed a committee to deal with this matter, and they were equally divided, and obviously the question may be very well left to the international prize court.

I should like now to revert to the question of contraband of war and food supply and the doctrine of continuous voyage. Is it or is it not a matter of great moment to us that this doctrine of continuous voyage should not be applied to conditional contraband? I do not think it is at all. Of course, everything connected with the food supply of this country depends entirely and solely upon ourselves—whether we are to be starved or put to great inconvenience in war time. Everything depends upon whether we have a sufficiently powerful fleet. It is no use at all to tell us that if we temporarily lost the command of the sea this doctrine would be detrimental to us. If we temporarily lose the command of the sea we are doomed. There is no question of that at all. Our life, our commerce, which is the vitality of our blood, and the integrity of our shores, which means freedom for everyone of us, are absolutely dependent upon the strength of our navy, and that is a point which honorable gentlemen opposite have to remember. We must have a sufficiently powerful navy to be able to permit all British ships to enter our ports without molestation. Comparatively speaking, neutral vessels do not count. It has been explained that 10 per cent of the food and raw materials brought into this country is brought in by foreign ships, but that seems to be rather an exaggeration. Probably 95 per cent of the whole imports of food and raw material are brought into this country by British ships. It is sometimes attempted to be proved in a curious way that we may ourselves retain command of the sea and yet, at the same time, cruisers may be able to cut off neutral ships coming to our ports without interfering to any great extent with British ships similarly engaged, which, if they were interfered with to any great extent, would force us at once to surrender because we should be starved out. That is so illogical that one can not attempt to deal with it. It is perfectly hopeless.

How does this doctrine of continuous voyage affect us adversely? What is the present position? Supposing we were at war with Germany to-morrow, and we blockaded her North Sea ports, she would get supplies through the neutral ports of France, Belgium, and Holland, without any difficulty. How does that affect us? She gets her supplies all right, and we might perhaps refer to the instance of Rotterdam particularly where she could certainly get them with much more ease and less expense than anywhere else. What is the result there? They are transshipped. All the frontier railways

are blocked. We know what the state of war is on a frontier with trains full of men, supplies and armaments, and all the traffic congested. You know really what a very poor chance Germany would have of getting supplies from there. What supplies she did get would be enormously increased in price. There would be the breaking of bulk, the handling, the rehandling, and the sending off. All that would cause such an enormous cost in the total that her industries would be quite starved, and, of course, the getting of food would be quite out of the question because the cost would be so great. What would be the difference to us? At the present moment all our food could be stopped by any power with which we might be at war if that power were strong enough to drive our fleet off the sea. The amount of the imports to this country in these neutral ships in the way of food or war material is quite trivial. They would go into French, Belgian, or Dutch ports, and the goods could be very easily brought over here at very much cheaper rates than similar imports could be taken into Germany. I think there is no doubt at all on that subject.

The only other question which was raised in the debate was that in relation to the sinking of ships at sea. It is always assumed that the law is that we must not sink a neutral ship at sea. But there is no decision by any English court in the least bearing upon that. In all the cases which have been quoted to-day—the judgments of Lord Stowell and Dr. Lushington—the only thing they say is that if a ship is sunk at sea, then compensation must be paid. That is the only point with which they deal. Well, how do we stand at present? Supposing the Declaration of London is not ratified, we are precisely in that position with other nations. As we know by the memorandum sent in, we are at liberty to sink neutral ships, but because of our statements, and the assertions made by our press, and so forth, we have not that authority. We have cast it aside, and deprived ourselves of it, and therefore we are in the awkward position that others may sink neutral ships, but we must not do it. I agree with a great deal of what was said by the honourable and learned member for Edinburgh University (Sir R. Finlay). He said that extreme cases must not be taken as precedents in law. In the case of a ship with food for an enemy being seized, of course we could sink that ship, but although, according to the Declaration of London—and it is almost a paradox—there is permission given to sink the ship, I do not know how it is to be done. That ship must be trying to break the blockade, or be resisting the legitimate right of search, or have more than half of its cargo contraband.

But then there is the other provision that the crew is to be placed in a place of safety. As the honourable and learned gentleman mentioned, a warship going into action would hardly be considered a

place of safety, and consequently the commander of that ship must charter a ship to take the captive crew on board. Otherwise he could never sink the ship at all. I warmly support the ratification of the Declaration of London. I am quite certain that, although it may not lead at present or in the immediate future to any diminution of armaments or any diminution of the terrible outlay on ships of war which now has to be borne by the people of the world; still it can not have the opposite effect, and in time we may hope that it will lead to some general perception, which will be admitted by people generally of the value of arbitration. That is a very great and important step in advance, and I believe the ratification of the Declaration of London is a very important step in the history of the evolution of international law.

Mr. CAWLEY.¹ I agree with the view advocated by many exponents of the Declaration of London that this should not be a party question. I could have wished that it was a question from which the Government whips could have been kept apart. I do not think anybody in the House can quote a single instance where a bill of this magnitude brought in by the Government of the day, and for which the Government of the day was responsible, has not had the Government whips telling. I believe that under the present system anything else is inconceivable, but I can not see why because the party whips are telling it should be made a party question. Honourable members opposite are perfectly free to vote for the bill in spite of the fact that the Government whips are telling. I presume that the opposition whips will not be put on. In the case of a bill of this magnitude if any member on either side of the House holds the views which have been expressed by the honourable member for North-West Durham (Mr. Atherley-Jones) that this Declaration is fraught with dangers to the country as a whole, I am sure he will not vote for the Government to-morrow night against the convictions which he holds. I am perfectly certain that the Government need have no fear of the result if every honourable member in this House will give expression by his vote to-morrow night to his reasoned convictions.

I admit freely that a large amount of opposition has been worked up against this bill and against its corollary the Declaration of London. I know the way in which that opposition has been worked up. I know it in my own division. The late honourable member for King's Lynn went down to a dinner of the chamber of commerce and harangued them upon the subject. There was nobody to take the opposite point of view with anything like the knowledge or ability of Mr. Thomas Gibson Bowles. That I believe happened all over the country. It was the opponents of the Declaration of London

¹ Liberal.

who agitated, and by their agitation creating a false impression, managed to get a certain amount of support from chambers of commerce in this country. A short time ago one of the main reasons given for opposition to the Declaration of London was that the colonies had not been consulted. That has now been dropped. To-day we have heard from the right honourable and learned member for Edinburgh University (Sir R. Finlay) a most extraordinary argument upon this point. He said it was perfectly right that they should be consulted, but having been consulted, no notice should be taken of their opinion. I believe that the actual words used were that this House should not be biased in any degree by what they said. What is the use of consulting the colonies if you are not going to be biased in any degree by what they say? Now we are asked to consult a royal commission. I wonder would the same thing be said after the royal commission has been consulted?

Surely if we are not going to be biased in any degree by the opinion of our colonies we ought not to be biased by the opinion of a royal commission. If that report is against the view of the right honourable and learned gentlemen we shall be asked to consult some further body, and if we consult that body we are not to be biased by their view. What is the basis of this demand for a royal commission? I have not heard to-day the suggestion of any kind of information which is lacking at present which has not been brought forward and which a royal commission might bring forward for the consideration of this House. It is about two years since the Declaration of London was first signed. During these two years a strong agitation against it has been going forward. Very clever men who felt strongly on the question have been putting their views before the country. I should like to know what are the kind of views, and what is the kind of information which it is suggested that a royal commission might furnish to this House? We have heard none. I admit that a large amount of opposition has been worked up against this measure. I believe that it has been mainly worked up by showing people the kind of thing that might happen under the Declaration of London. It has been shown, over and over again, by opponents of the proposal that if the Declaration of London were in force war would be horrible. But war would be horrible if the Declaration of London were not in force. That argument was brought forward in that form yesterday by the leader of the opposition. He presented to his audience a lengthy argument, occupying about a column of the *Morning Post*, in which I read it, in which he pointed out the awful horrors that would result if this country were involved in war, and if the Declaration of London were in force. There is not a single item in the catalogue of horrors which could not happen as easily and would not happen as certainly if the Declaration were not ratified.

It might be said, and has been said by honourable and right honourable gentlemen opposite that considerable changes are made by the Declaration of London. It is said that food as conditional contraband will more easily and more certainly be stopped by belligerents who are at war with us. I would point out that at the present time conditional contraband is liable to capture which is shown to be destined for the use of armed forces or a Government department. That is the rule as stated in the Declaration of London. There is another rule in the Declaration of London, but that is a mere rule of evidence, and does not operate until the question comes before the courts. The rule, and the only rule, under the Declaration of London is that only those things can be condemned as conditional contraband, and liable to capture which are shown to be destined for the use of armed forces or a Government department. That is the rule at present, and I would point out that no fewer than three honourable and right honourable gentlemen who have been speaking to-day in contrasting the present rule with the rule under the Declaration have stated this as the existing rule, and have stated as the rule under the Declaration, this, plus the rules of evidence which decide when things are to be presumed to be conditional contraband. But such rules exist at the present time, and it is not fair to state in one case the rule plus the further rules of evidence and in the other case to omit the further rules of evidence. The rules of evidence in the present case were stated to-day by the right honourable and learned member for Edinburgh University, to be that consignment to a port of naval or military equipment creates a presumption of contraband, and if in the one case you are to take that presumption you must take it in the other. It was stated by the leader of the opposition yesterday that a naval captain who captures a prize might well say "this is a warlike base."

Surely the same thing applies at the present day. The naval captain might say that the particular port was a port of naval or military equipment. Take for instance the town of Manchester, which is the market for provisions for the towns in South Lancashire and probably about the most important market for provisions in the world. In time of war Manchester provides a brigade for the territorial forces. Would it not be possible for a naval captain to say that Manchester was busy mobilising a brigade of infantry and was a port of military equipment? It seems to me quite as simple and quite as right for a naval captain under those circumstances to say that Manchester is a port of military equipment as to say that Manchester, Liverpool or Bristol is a base of naval supply under the Declaration of London. I can see no difference. If you are to leave it to the discretion of the naval captain he is as much justified in one

case as in the other, and would be as likely in one case as in the other to say that food is contraband of war. But the matter does not end there. Because there is no doubt that at the present time a hostile power might and probably would say that all food is contraband of war. The right honorable and learned member for Edinburgh University read us a lecture on the iniquity of that suggestion. He said in fact that it was playing in the hands of our adversaries.

I think if a foreign nation takes that argument, it applies with equal force to the elaborate argument of the leader of the opposition in trying to extend the meaning of the word "base," or to the argument of the honorable and learned member for Durham (Mr. Atherley-Jones) in trying to show that the Declaration gives greater powers to others. But is it so absurd for a hostile power to say that food shall be contraband coming to this country? The instance in regard to Prince Bismarck has been quoted. The actual words of Prince Bismarck do not exclude food, for he expressly approved of the declaration of food as contraband. He said the measure had for its object the shortening of war by increasing the difficulties of the enemy, and it was justifiable as a step in war if impartially enforced against all neutral ships. That was the opinion of Germany then, and that was the attitude taken up by Germany during the Russo-Japanese War. They took up that attitude when Japan and Russia declared food to be contraband, and that belligerent powers had the right to declare food to be contraband. I and a great many others believe that is what Germany would do if Germany were at war with this country. It is not only believed on this side of the House, but Lord Selborne, speaking in another place, expressly said that he was of opinion that a hostile country at war with this country would declare all food to be contraband of war. He was putting an illustration. That is the opinion of a nobleman who held office in a Conservative Government as First Lord of the Admiralty. He believed, as many of us believe, that in the case of war we should have food declared to be absolutely contraband.

I object to those people who think it is an absurdity to say that food would be declared contraband, when we have a nobleman, who was First Lord of the Admiralty in a Unionist Government, giving an opinion which I submit is not one to be lightly regarded. There would be differences between the present practice and what would occur under the Declaration of London. Those differences would be, firstly, that in the case of the condemnation of a neutral ship, and the sinking of a neutral ship, the circumstances would go, not before a belligerent prize court, but before an impartial court. There would be this advantage, that privateers would be almost certainly condemned. The right honorable gentleman the Under-Secretary for

Foreign Affairs, when he opened this discussion this afternoon, said that the international prize court might say that they could not take cognisance of this matter of privateering, and that different powers had taken different views of it. But if they did take cognisance of it, there are only three powers who had declared in favour of merchant ships being converted into men-of-war on the high seas, and the great probability, if a majority in Parliament is against this, the majority in the international court would be against it. If the court does consider it at all, the great probability is they would take the view held by this country. If they did not, then, as has already been pointed out, we should be exactly in the same position as at the present time. We should be in the position that conversions on the high seas will be made, and we should get no redress. That is exactly the position to-day. Conversions on the high seas would take place: they would go before the prize court of the wrong-doer, and we would get no redress. If, on the other hand, as I believe they would, the international court decided that such a thing is not legal, and could not be done, then we stand to gain everything and stand to lose nothing. Another difference would occur. The court under the Declaration would enforce that food could not be declared absolutely contraband as it can be at the present time.

I think one really strong argument can be brought forward against the Declaration, and it was put with great force and moderation by Lord Selborne in another place, and it was put with equal force, but not with equal moderation, by the leader of the opposition yesterday, and that is this, that when neutral powers have a court to look to eventually, they are less likely to intervene in a war. There is a possibility at the end of the war of obtaining redress in the international court, and they are less likely, therefore, during the war to press their objection. I believe there is something in that argument in so far as food supply is concerned. It must be remembered that what brings neutrals into war is not so much the view held by the few merchants who have suffered, and not so much the view held by the neutral Government, as the gradually rising irritation of the people of the country, but I believe there would be, certainly to a limited extent, a smaller likelihood of a neutral power intervening in time of war owing to the acts of the belligerents, when there is a chance of compensation at the end of the war. Which is the power most likely to irritate neutral countries? Which is the power most likely to cause the animosity of neutrals owing to its action during a war? It is the strongest sea power which is the one most likely to irritate neutrals by action against neutral ships. The strongest sea power at the present time is Great Britain, so that on the whole we stand to gain rather than to lose by lessening the likelihood of neutral intervention. These are some of the main reasons for thinking that we

gain rather than lose as belligerents under the Declaration of London, if it is ratified.

But besides the effect upon our food supply, there are many other things to be considered. There is the point that any effect which is produced is only produced upon a small fraction of the amount of food brought to this country. It has been suggested that the greater portion of that supply would come in neutral vessels if war broke out. I would point out that when we talk of neutral vessels you are reckoning German ships. They would not be heard of in time of war with Germany, because her naval marine would be cut off, and to that extent the number would be lessened. Again, it may be said, would not America send a larger number of her grain ships? At the present time the burden of the carrying is done by this country, not only to this country but between foreign countries, and that supply between foreign countries would have to go on during the war. Where are you going to set free the ships? America can not send them, and if she did, they would just be as liable to attack, so that the ships can not be set free to take part in trade between Great Britain and America. I do not for my part think that the proportion of neutral ships would be increased; and it is quite certain that the proportion of neutral ships in time of war would be relatively an unimportant part of the carrying forces coming into this country. That is admitted by Lord Selborne. He said that the neutral ships were of great importance though relatively of small importance compared with that which is brought by our own ships. There can be no doubt about it that whatever happens it is only a small proportion of what is coming to this country which can be interfered with by any circumstances created by the Declaration of London. There is another point and that is, that the power of any of our adversaries to cut off any large proportion of our food supplies is very limited indeed. The royal commission which sat upon food supplies reported to that effect. The result of their report is summarized by the vigorous opponent of the Declaration of London, Mr. Thomas Gibson Bowles, in these words:

We come then at last to this that, as regards supplies, no apprehension need be felt; that they will suffer no material diminution in quantity, and therefore, can hardly suffer in material appreciation of their price; that the addition to price will be "relatively small"; and that finally it is a question not of price but only of panic, not of scarcity but only of a scare.

Mr. Thomas Gibson Bowles himself says as his considered opinion, that unless the command of the sea were lost we can protect the passage of any such supplies, and even if we were not so predominant, that even then so wide and open are avenues of access to the British islands that the supplies can not be intercepted to any appreciable extent were all the navies of the world to be set to the task.

That is the answer of the leading opponent of the Declaration of London to the leading argument against the Declaration of London. I think for that reason this argument about food supplies is not a strong one. It affects part only, and that part, according to the statement of the strongest opponent of the Declaration of London, can not be seriously affected. As a matter of fact, the terms of the Declaration of London tend not to less, but to greater safety. There are one or two points in which we give up our offensive powers. I am prepared to admit that. There is, for instance, the doctrine of continuous voyage, and there is the point about the blockade beyond the area of the operation of the ships which are blockaded. Those are both points on which we do sacrifice something. I do submit those are entirely negligible points. I think, as belligerents, we do not gain much, but that we do gain on the question of neutrals and on the question of blockading, which are very vexed questions, and on which at present France takes a very different view. Those questions are cleared up. In the case of the Bundesrath we gave up our claim, or rather we allowed the Bundesrath to go through. Under the Declaration of London a question of that kind is cleared up once and for all, and numbers of points upon which we might come into conflict with neutrals are reduced almost to nothing. That is a real advantage. Secondly, we have the advantage that food under any circumstances can not be declared to be contraband. As belligerents I am prepared to admit the advantages gained are not considerable. I think we gain something. I do not think we gain very much. As neutrals I think we gain enormously. I think we gain particularly by establishing certainty to a great extent as to what is and what is not contraband. We gain by the establishment of universal laws which are to be observed, and we gain particularly by having a court in which we can recover in case the international law is broken. In the past we have had to go to the courts of the wrong-doers themselves.

A good deal has been said about the sinking of neutral ships. Never in the history of this country have we recovered one halfpenny because our ships, when neutrals, have been sunk by belligerents. We have had to go into the courts of the belligerents. The honorable and learned member for Durham (Mr. Atherley-Jones) suggested that Russia withdrew its claim to sink neutral ships. Russia has done nothing of the kind. Russia sunk neutral ships before protest and after protest. She sunk them before she apologized and after she apologized, and when it came before her courts her courts upheld her, and refused to pay one halfpenny compensation for the ships which were sunk by the Russian fleet. That is what has happened in the past. Our merchants have had to go into the courts of the wrongdoer, and they have refused to pay in the past.

Now we will have to go to a neutral court administering definite laws, and will be able to recover compensation. That seems to me a real and very important gain from the Declaration of London. But I am prepared to admit that I support the Declaration for another reason, which I believe obtains very little support on the benches opposite or among the opponents of the Declaration. I think that when, and only when, no question of national security is at stake, that it is a very important gain to have secured an international court administering international law. I believe that that is a real step forward in international history. I think it is a step forward in the direction of widening the amount of international agreement and widening the number of things which are brought before an international court. I support this Declaration in the first place because I can not see any way in which it affects our national security, and because I think that it does give a real and definite advantage as neutrals, and lastly because it does give us this great experiment and great step forward, and an experiment which I believe is pregnant with great advantage to the future of the world.

MR. CHAPLIN.¹ I can not say that I agree with the statement which fell from the honorable member who has just sat down that we have much to gain and very little indeed to lose by the ratification of the Declaration of London. I hold, on the contrary, exactly the opposite view. I am convinced that the real position is this—that we have much to lose and very little to gain. Neither am I much perturbed by the estimate which he gave us—I think, upon the authority of my honorable friend, Mr. Thomas Gibson Bowles—that, as regards the importation of food into this country, we should suffer very little injury and need have very little apprehension; because I am of opinion—and that is why I can not say for a moment that I regret the introduction of this question—that the real and vital question which we have to consider in discussing the second reading of this bill is the effect of the Declaration of London, and also our present position in this country as regards food supply in time of war. The honorable member has referred to the report of the royal commission on food supplies. As I am one of the few members of this House who served upon that commission, as I was indeed myself mainly or largely instrumental in procuring its appointment, and as the subject is one with which I am thoroughly familiar, I hope the House will permit me to intervene for a very short time in this debate. If I had not learnt by long experience—and I have served on many commissions—how very little attention their reports in nine cases out of ten command even upon the most important questions, I own that I should have been surprised when I remember to how small an extent the report of that commission was successful in

¹ Conservative.

arousing the attention of the country as to the fool's paradise in which we have been living for so long and are living at this moment in regard to the security of our food supply in the time of war. But there it is, and grave indeed were the facts elicited by that commission. So serious indeed were they that with all those facts before them, how did the commissioners commence their report? It will be found in one single sentence, which occurs immediately after the quoting of the reference to the commission:

It seems to us impossible to over-estimate the importance of the subject that was entrusted to our care.

To that statement the signatures of all the members of the commission were appended, beginning with that of His present Majesty—because so important was this subject regarded as being by the Government who appointed the commission that the then Prince of Wales was asked to serve, and graciously consented to do so. That was the first name, and the last was that of a member of the Labor Party in this House. That may give some idea of the importance and gravity which the members of that commission themselves attached to the subject. What are the facts? The chief and most important of them I will give to the House as briefly as I can. Take the question of our food supplies and where they come from. In regard to meat, dairy produce, cheese and butter in particular, meat—which is held to include beef and veal, mutton and lamb, pork and bacon—and eggs, the quantities for which we have to depend on countries across the seas may be given in the following proportions: Forty-five per cent of the meat that we consume, 64 per cent of the cheese, 53 per cent of the butter, and 55 per cent of the eggs. These are comparatively unimportant, because we produce considerable quantities of these articles at home. But when we come to our supplies of wheat and flour—in other words, of bread, which is the great staple of the people of this country—the House ought to remember that the consumption of bread is immensely greater than that of any other kind or article of food, especially by the poorer classes—the facts are as follows. The royal commission reported unanimously in 1905, and I do not think I can put it more shortly than it is put in their own words to this effect:

We are of opinion that the consumption per head per year will not normally exceed 350 pounds, which would give a present annual consumption of 31,000,000 quarters, equivalent approximately to 600,000 quarters as the average weekly requirement.

Out of this enormous total it was estimated that rather less than 6,000,000 quarters consisted of home grown corn, or only 20 per cent of the whole consumption. In other words, that for 80 per cent of

the great staple food which we require for the people of this country we are entirely dependent on supplies which are and must be brought to our shores across the ocean. As a matter of fact, the position of our country at this moment, quite independently of the Declaration of London, is very like to an army in the field cut off from its commissariat, unless you are certain of being able to keep your communications all over the world.

In regard to the present supplies which are actually in existence in the country at any given time, I am bound to say that there was some small difference of opinion in the royal commission. The majority put the minimum supply at any given time in the country at six weeks and a half. The minority, of which I was one, thought it would not be safe to put that estimate at more than five weeks and a half. The difference between us arose as to the amount which shortly before harvest is left in the hands of the farmers of this country. Perhaps my experience of that particular branch of the subject was gained in the greatest wheat-growing county in the Kingdom—Lincoln—a county which at one time grew as much or more wheat than was grown in the rest of the whole of the United Kingdom. I adhere absolutely to my opinion. If I had the time, and if it was worth while, to give the House the grounds for my opinion, I am very confident that I should get the majority of the House to agree with me that my estimate was right, and that the other estimate was more likely to be wrong. As a matter of fact it is not a very serious question, and I do not therefore stop to dwell upon it. The exact amount makes very little difference, but I imagine that all parties in this House will agree that it is a position in which a country like our own—the heart and center of an Empire like ours, with all its great interests and responsibilities—ought never for a single moment to be placed.

I think the House will be interested to know whence comes this immense proportion of our staple food. Eighty per cent of the bread upon which we absolutely depend is brought from different parts of the globe in the following proportions: In 1904—and again I take the figures of the royal commission, for I have only come back this afternoon from foreign climes, and I have not had the means or opportunity of getting the latest figures—there came from the British colonies and possessions 39 per cent; from Europe (including Turkey) there came 25 per cent; from the United States of America 19 per cent; and from other countries 0.4 per cent. One remarkable feature of these figures—to which I call attention because the question of the supplies coming from America has been referred to already this evening—a most remarkable feature, is the enormous falling off in the supplies from the United States. No doubt they

will in the course of years become less and less, although there has been on one or two occasions a considerable rise since the time I quote. Then there is another consideration, one of vital importance. These vast supplies of our staple food are brought to us from all parts of the world, over, in many cases, enormous distances. There is another point, and one of the most extreme importance, and that is that a large amount of these supplies are still brought to us in sailing ships. Several witnesses called our attention to this point. One of them maintained, and I have never heard the accuracy of that statement questioned, that in what is called the cereal year 1891-92, 26 per cent of the whole of our foreign imports of wheat were brought to us in the sailing ships of that time, mostly from the Pacific coast. That was due, I understand, to the paucity of coaling stations—the difficulty of getting coal. No doubt that has diminished to some extent, but surely many of them still bring corn in that way. On that point in the memorandum which was sent to us by the Admiralty very early in our proceedings—and I can not sufficiently express my gratitude and appreciation for the great courtesy that was shown to us by that department and the readiness to give us information from the beginning to the end of that inquiry—there occurs a sentence which is certainly deserving of the attention of the House, and above all of the right honorable gentleman opposite. What was said was this:

It is to be noted that all or nearly all of the grain brought in sailing ships comes from the Pacific ports, the most of which is carried in full cargo, and that on the outbreak of war a large number of them would be already afloat for a long voyage and would afford an easy prey to any enemy on the alert.

I think we must be quite certain of one thing, that if such a misfortune fell upon this country as that we were engaged in war with one or more of the great powers of the world, the enemy would be quite certain to be sufficiently on the alert, and would know as much and very likely more, as to the progress of these vessels and the localities in which they were to be found as we ourselves should be likely to know. These are essential facts put as briefly as I can put them before the House. That is the position which was disclosed by the report in 1905. We were informed at that time that the practice of buying less and less corn on the part of the merchants to keep in stock, and of buying more and more from hand to mouth, from week to week, just as it is wanted, was steadily increasing. I am sure the House may take it as practically certain that the amount of the stocks existing in the country at the present time is even less than according to the estimate I have given. That is the position. That being so, the question that we have to consider to-night, in my humble opinion, is how is our position, so exceptional and so dangerous as it would be in the unhappy contingency of war, to be met? Will our position be made

better or will it be made worse by the ratification of the Declaration of London which we are asked to signify our approval of by the second reading of this bill?

On this question, I am referring now to the effect of the Declaration, there is one thing we ought never to forget, although it seems to me that upon the other side of the House it has rather escaped the attention it deserves from honorable and right honorable gentlemen, namely, that the situation in regard to our food supplies places us in a totally different position from that occupied by every other single country in the world. I think, therefore, that arrangements of this kind, which may very well be adapted and perfectly satisfactory to countries like Germany and Russia and France, may be wholly unsuited to the United Kingdom, and not only that, but there may be dangers in them which are not always foreseen by those who have not the opportunity of giving very careful attention and study to this question of food supply upon which we depend for our existence and which quite conceivably in certain conditions might well become dangerous and fatal to the future of this country. It seems to me—and I say this with great respect, and with every desire in the world to avoid anything offensive in its character, because no one in this House feels as strongly as I do that, above all and before all, if that be possible, this question should be kept entirely outside party consideration—that either the Government or their representatives on the Declaration and previous conferences either ignored in their calculations or were not sufficiently well acquainted with or did not pay sufficient regard to, the different conditions affecting our food supply, especially in time of war.

This matter is really far too serious for anything of that kind, and I say this because I have had occasion to give to this question a great deal of study and careful attention now for a very considerable period of time. Personally, I cannot help regretting that such element should be imported into this most important question, far more important than any other questions which are before the country at the present time in regard to the future security, both of the nation and of the Empire to which we all of us belong. That being my opinion as to the gravity of this question standing in my place in Parliament I do not hesitate to say, with a full sense of the responsibility that rests upon me, that the dangers which await our food supplies in times of war in the United Kingdom are bad enough and great enough already in the conditions under which we live even to-day, but that they will become infinitely worse under the provisions of this new-fangled Declaration, which, at all events, has all the appearance, whatever the intention may have been, of being carefully planned and constructed by some of those who were responsible for

it with a view to limiting and hampering as far as possible the undoubtedly great powers which are possessed by the British Navy.

I am prepared not only to make that statement, but to rest my justification for making it upon what I believe must be, and can only be, the answer to two questions which I am going to put to the Government through the right honorable gentleman the First Lord of the Admiralty. One of them is this: Are the provisions for policing and safeguarding our trade routes, which have been very justly called the arteries of this Empire, adequate and sufficient to-day? I am inclined to think I can give an answer to that question myself, and to give it out of the mouth of a very distinguished admiral who gave evidence before the royal commission. He was a witness not called by myself, and as a matter of fact, if I may use the expression, belonging to a camp the very opposite to my own. I was always most apprehensive on the question of whether our food supplies in this country were safe or not. I was always myself for doing something in addition to the maintenance of a strong fleet, which we were required to consider by the terms of the royal commission. The gallant admiral had no fears whatever upon the subject of food. He was quite easy upon that point, subject to one condition, namely, that we had our cruisers properly distributed, and that we had plenty of them, as he described it, to hunt other people away. Upon being pressed upon the rather crucial question as to how many cruisers he thought ought to be available for hunting other people away, he frankly confessed, and he was a great supporter and adherent of the Admiralty, "I should certainly like to see more." What happened? He gave his evidence on the 20th June, 1904. On 5th March, 1905, we had before us a return presented to the House of Commons, in which 59 cruisers and 94 other ships, 153 in all, had just been struck off the list of effective warships in that year. Taken in connection with the statement of the admiral and the facts I have just related there is only one possible inference that can be drawn—I understand that those ships have never been replaced, and it is that our trade routes are not sufficiently guarded at the present time, and if that be so, they will be infinitely worse guarded under the Declaration of London. What is likely to be the position? If the claims of Germany, France, and Russia, so definitely put forward for the reestablishment of privateering in its worst and most dangerous form is ever put into practice again there is only one answer to the question. How are you to know when, where, or for how many of those ships transformed on the high seas from merchantmen into war vessels you are to be prepared, and if you are not prepared for them, what is to become of your food supply? As you have practically agreed to sign this Declaration have you not to a large extent condoned the practice?

Mr. McKENNA. It is not dealt with in the Declaration. It is left an open question.

Mr. CHAPLIN. My complaint against the Government is that they have left this an open question, and I thank the right honourable gentleman for putting into my mouth the words I was going to say. That is the whole position, and that is the great difficulty we are in. Having studied and considered this question for years, that is what I am more afraid of than anything else, and that is why I am content to base my opposition to this Declaration upon that point if upon no other. There are many other points, but I am not going to dwell upon them now, because they will be thoroughly dealt with by those who are experts on the question, which I do not pretend to be. Nevertheless, if I had remained silent having acquired the information on this subject which I have done from thoroughly legitimate sources—if I had not taken the earliest opportunity on the very eve of my return from abroad this afternoon I should have felt I had failed altogether in my duty.

Mr. McKENNA. The right honourable gentleman has reminded the House with very great truth of the value to us and the importance of our overseas trade in food. He seems to argue from the importance of that trade that we shall suffer severely if we sign the Declaration of London. I entirely agree with the right honourable gentleman as to the vital importance of keeping our ports open to food supplies during the war. I can assure the right honourable gentleman that the existence or the absence of any agreements will of themselves be of very small importance in keeping our ports open. What we shall have to rely upon in order to secure our trade in time of war is our navy.

Mr. CHAPLIN. Quite so. But have you got the ships?

Mr. McKENNA. That is another question; but if we have not got the ships the whole discussion about the Declaration is quite irrelevant. If we are in danger in time of war and we have not got the ships we may as well at once put up our shutters.

Mr. CHAPLIN. I understand that you are able to police and guard our trade routes now and in time of war?

Mr. McKENNA. Yes, sir. Our navy is adequate to guard our trade routes and to secure sufficient full supplies of food for our people during war, and we shall rely on our navy to secure that food, and not upon the existence or the absence of the Declaration of London. How does the Declaration of London affect our food supplies? I would observe, in the first place, that in the whole course of the debate right honourable gentlemen and honourable gentlemen opposite have only considered the Declaration of London from the point of view of Great Britain as a belligerent, and it is only from that point of view that I propose to speak on behalf of the Admiralty in reply

to the criticisms which have been raised. As to neutrals the Declaration has not been attacked. I have attended the whole of the debate, and I think it has been admitted that as a neutral we gain rather than lose by the Declaration. The important argument raised has been the effect upon this country as a belligerent.

The argument on this point has been confined to three heads. First of all the conversion of merchantmen at sea to ships of war; secondly, the effect upon our supplies of food; and, thirdly, the sinking of neutral vessels. Upon all those three points those who have addressed the House have endeavoured to convince honourable members that we should lose seriously as a belligerent. I propose to answer those three points. First of all, on the question of the conversion of merchantmen into warships upon the high seas. I pressed the right honourable gentleman opposite to tell me how we should be affected as belligerents by the Declaration in that respect. The Declaration of London does not mention the conversion of merchant ships to men-of-war on the high seas. I pressed the right honourable gentleman on this point, because I was anxious to know the full extent of the argument upon that point, and what is it? I reproduce it from the mouth of the most authoritative exponent of the views of honourable gentlemen opposite, the late Attorney-General. He told us that although the subject was not mentioned in the Declaration of London, nevertheless, as an international prize court may hereafter determine a question between a belligerent and a neutral other than Great Britain in which the belligerent has converted a merchant ship into a man-of-war and has captured a neutral vessel and the international prize court might then determine that compensation was payable to the neutral, that the doctrine of conversion would thereby receive a moral sanction. Am I right? Am I correct in stating the right honourable gentleman's view that a decision of the prize court not affecting us might give a moral sanction to the doctrine of conversion which would bind us?

SIR R. FINLAY. A legal sanction.

MR. McKENNA. I am really astonished at the use of that word by the right honourable gentleman. What can the international prize court decide and only decide? It can only decide a question as between a belligerent and a neutral in this matter, and it can only decide whether a neutral is entitled to damages or not. That is all. It can decide only upon the facts of the specific case. It can not determine any question as between two belligerents, and it is not within its jurisdiction to lay down any rule of law as to how one belligerent should treat another. I am surprised the right honourable gentleman who has held high legal office should give the weight of his authority to those persons who would wish to cramp the authority of the British Government in this respect. If this Declaration were

signed to-morrow it would not bind the British Government in the slightest degree to allow belligerent rights to any merchant ship that was converted on the high seas, and no decision of the international prize court under any sanction or authority could hereafter bind the British Government and compel the British Government to allow belligerent rights to a merchant ship converted on the high seas.

SIR R. FINLAY. I do not think the right honourable gentleman has followed the point. The decision, although between other parties, if it proceeded on the legal precept that conversion might take place on the high seas, would most seriously prejudice our position.

MR. McKENNA. That is what I put before the right honourable gentleman as his statement of the case, and I can assure him that in his view he is mistaken.

MR. DUKE.¹ Would not the court follow its own precedents?

MR. McKENNA. The court has no jurisdiction as between belligerents. There is nothing in the Declaration of London which affects the rights of belligerents *inter se*. It only affects the rights of belligerents as against neutrals. Consequently, every belligerent, as against his enemy, is not bound by any decision of the international prize court, and the international prize court has no jurisdiction to give a decision binding upon a belligerent as against his co-belligerent. I am quite aware of the fact that nineteen-twentieths of the opposition to the Declaration of London is founded on a misapprehension of its content. I say, after being fully advised on the subject and after a tolerably complete study of the matter—if we are engaged in war with a foreign power and after that foreign power converts its merchantmen into ships of war at sea, we are as completely at liberty to deal with the merchantmen so converted after the signing of the Declaration as we were before it. I think that disposes of the first point. Then we disagree on a question of fact. But if I am right in my construction I take it the right honourable gentleman will agree with me there is no objection to the Declaration of London on this point.

MR. WYNDHAM.² Of course the Declaration does not affect belligerents *inter se*. The argument of my right honourable friend was this: That belligerents, if our contention be true, will find greater sanction in thinking it is right to destroy neutrals and that will in our opinion have a most injurious effect on the food supplies of this country carried by neutrals.

MR. McKENNA. I am only dealing now with the question of conversion, and, speaking on behalf of the Admiralty, which has to carry out the instructions, I say that under the Declaration, if we

¹ Conservative.

² Conservative. For several years Mr. Wyndham acted as Mr. Balfour's secretary; later he was an Under-Secretary of War under the Salisbury Ministry.

are belligerents, we should not hold ourselves bound as against the enemy to treat any merchant ships which he may convert on the high seas into men-of-war as entitled to belligerent rights. I can not say anything more clear or precise on that point. So much for conversion at sea. We claim that no power has a right to convert merchant ships into men-of-war at sea, and we should hold ourselves absolutely at liberty to take what course we thought right in such a case. We are not bound in any way by the Declaration of London in that respect. So much for the first point.

The next point was as regards the supply of foodstuffs to this island should we be engaged in war. The right honourable gentleman declared with some emphasis that the danger to this country under the Declaration of London was very great. He really attributed to the Declaration a grave importance in the possibility of its limiting our food supply. Again, what are the facts in this very simple matter? As I have said, we rely upon the navy to keep the sea open. According to the right honourable gentleman, the Declaration of London is going to put in jeopardy foodstuffs carried in neutral ships which would not be in jeopardy at the present time. How much greater must be the jeopardy of the foodstuffs carried in our own ships? And when we remember that nine out of ten ships in time of peace carrying food are British ships—there would be more in war—even under his own construction how can he pretend that there is a serious danger to our supply owing to the Declaration of London? The Declaration only affects one ship in ten. It does not touch our own British ships if we are engaged in war. There is nothing affecting belligerent ships. Still the right honourable gentleman thinks that this one-tenth of our foodstuffs—that is the maximum figure—that this one-tenth of our foodstuffs, which, according to him, would be placed in jeopardy is of this most vital importance. But would the foodstuffs be placed in jeopardy under the Declaration of London in a degree greater than they would be in jeopardy now? The answer to that point is very simple. The Declaration of London so far from jeopardizing the foodstuffs in neutral ships safeguards them. I not only think that the right honourable gentleman's point had not any great value owing to the comparatively small amount of foodstuffs carried in neutral ships, but I think his point was wrong. The Declaration of London absolutely safeguards foodstuffs in neutral ships as compared with the present practice.

Taking his own illustration of grain carried in an American ship, I would observe, first, that the United States Government are in favour of this Declaration. What does that mean? The right honourable gentleman took the case of contraband food in an American

ship, and he argued that we should suffer under the Declaration because if we were engaged in war and our enemy captured an American ship carrying foodstuffs, the United States Government would go to war about the neutral and would fight, whereas if we signed the Declaration of London, he says the United States would not go to war about it. I should think that the acute mind of the right honorable gentleman would have seized the question that the vital point there would be whether the United States Government signed the Declaration. It would be quite immaterial whether we signed, because it must be supposed that it is our enemy who has captured the United States vessel, and it does not matter a snap of the fingers whether we have signed the Declaration. What does matter is whether the enemy and the United States have signed the Declaration. I want to make it perfectly clear that when we are belligerents, the ratification by us of this Declaration will not have the slightest effect upon the relations between the two other Governments, one our enemy, and the other a neutral. The right honorable gentleman says that the United States Government would go to war with our enemy if their ship was captured carrying food, whereas it would not go to war if their ship was captured by the enemy carrying food if this Declaration is signed by us and by them. Let us see whether that is so or not. The United States Government have approved of this Declaration, and they believe that the principles declared by it are just and proper. The right honorable gentleman, therefore supposes that the United States Government are going to war because another power does what they think right and just. He has entirely mistaken the effect and meaning of the Declaration. He admits, and I admit with him, that in general practice food has only been conditional contraband, the condition depending upon whether it was intended for the armed forces of the enemy. That has been the general practice, although there has been very considerable exceptions, and no power has ever admitted that it is bound by the general practice. I want to get to all points of agreement. The Declaration of London declares that food may become contraband under precisely these conditions——

Mr. CHAPLIN. No.

Mr. McKENNA. In that it is intended for the supply of the forces of the enemy. It always must become a question of evidence whether food is so intended or not, and the Declaration of London lays down that certain facts shall constitute evidence that it is so intended. Yes, that is so. But without the Declaration of London food would have been treated as contraband precisely in the same way by the enemy.

Mr. WYNDHAM. How often in the last 50 years?

Mr. McKENNA. How often have there been wars? It has been so treated in every war that has taken place in the last 50 years. There is not a single exception. That food has been treated as conditional contraband of war evidences can be found in every war that has taken place in the last 50 years. It is common ground between us that in the general practice food would have been treated as conditional contraband, and that the condition which the enemy would have to prove, not when he stopped and captured the vessel, but in the prize court, is that the food was intended for the forces of the enemy. But both before and after the Declaration the belligerents would have the duty of exercising precisely the same function of stopping ships carrying contraband neither more nor less, and the Declaration of London determines the conditions under which the belligerents shall pay compensation to neutrals—nothing else.. It does not affect the operations of war, but it determines that if a belligerent wrongly stops a neutral ship and wrongly confiscates property it shall thereafter pay damages to the neutral who has been injured. What objection is there in that, and how does it affect food supplies coming to this country? The fact of the matter is that if we were at war, with or without the Declaration of London, and were unable to keep the seas open with our fleet, the enemy would stop all ships carrying food to our ports. We know that the Declaration of London, unless there is something in the way of reprisal by a neutral power, will not affect that in the slightest. It will not affect it in the slightest degree. It will be his duty to stop all ships in precisely the same way in order to determine the destination of their cargo. If he is not satisfied that the destination of the cargo is harmless, he will capture the ship. But the difference between what has been the law up to the present time and the law under the Declaration of London will be that a belligerent having captured the ship will have to pay compensation if he was wrong in his judgment, and it is quite right that he should pay it. The honourable gentleman argued that owing to the existence of the Declaration neutral ships would be stopped by an enemy of ours in a way in which they are not stopped at the present time. He gave absolutely no reason for that belief—none whatever.

Mr. BUTCHER. Article 34.

Mr. McKENNA. Article 34 does not affect the stopping of the ship

Mr. BUTCHER. Does not the right honourable gentleman think that article 34 is not only an invitation, but a justification to a hostile commander?

Mr. McKENNA. The honourable gentleman has not devoted, perhaps, as great attention to the consideration of what actually takes place in war as to the consideration of the words on paper. In the first place, how is the captain of the enemy ship or any cruiser to

know what is on board until he has stopped the neutral ship? He will stop the neutral ship carrying cargo to our shores whether there is the Declaration of London or not. He will stop it and examine the papers of the ship and the cargo, and so this notion that there is any invitation in article 34 is the purest invention. I cannot find language in which to express my view of the statement if I confine myself within reasonable limits. I take it that the commander of a cruiser who is endeavouring to stop the trade of the enemy, or put an end to the trade of the enemy, would stop every suspicious ship he saw, and he would examine the papers, whether under the Declaration or not under it, if he had any ground for believing that the ship carried contraband, or that the foodstuffs or conditional contraband were really intended for the armed forces of the enemy. He would not merely stop the ship, either under the Declaration or not under it. He would capture it.

The Declaration of London does not affect that at all. That would happen in either case. There is no change in the law under the Declaration in that respect; nor would there be in practice. Does the right honourable gentleman suppose that if this were adopted we should issue instructions to our captains of cruisers that they should in no circumstances stop a neutral, or that in all circumstances they were to stop a neutral? Of course not. No such instructions would be issued. We should rely whether under the Declaration of London or not under it for the protection of our commerce upon the ability of our navy to keep the sea clear of foreign commerce destroyers. If there are foreign commerce destroyers, foreign enemy cruisers, afloat our commerce would be in danger whether carried in our ships or in neutral ships, and the danger would be so serious that the Admiralty have felt justified year after year in asking the House of Commons to make adequate provision for the navy. So long as they do make adequate provision for the navy you have nothing to fear as regards the destruction of our food supplies, whether carried in our own ships or in neutral ships.

The last point that the right honourable gentleman referred to was the sinking of neutrals. Here again he alleged that in the event of war we should suffer serious damage by agreeing to the Declaration of London. I ventured to interrupt him in order to get from him more closely what is the precise point in this respect in which he believed that we should suffer as belligerents. How do we suffer as belligerents if the enemy sinks neutrals? The right honourable gentleman seemed to speak as if he were under the impression that it was not merely a case of sinking neutrals, but of sinking British ships. I know he did not think so, but it is a view very generally held as to the construction of this article, and it is a view which ought to be

emphatically cleared up. This article does not authorise or disallow the sinking of enemy's ships. If we are at war, our ships may be sunk or not sunk exactly as our enemy pleases, and nothing in the Declaration of London affects his rights or powers to sink or not sink our ships. The only thing that is determined is the conditions under which a neutral ship may be sunk. How are we affected as belligerents by that? The sinking of a neutral ship is no doubt of very great importance to the neutral Government. It is important to us if we are belligerents. The probability would be that if it were often repeated the neutral Government who suffered would probably not submit to it. The right honourable gentleman's point is, if I understand him correctly, that if we signed this Declaration we should be assenting to a plan which, if we did not sign it, would be so abnormal and so generally recognised as improper that any neutral would be roused to war if its ships suffered. Here again I ask the same question, how does our signing the Declaration affect the object one way or the other? Suppose we were engaged in war with a European power, and a neutral ship of the United States has been sunk by our enemy. How does our signing or refusing to sign the Declaration of London affect the feelings of the United States? The United States Government accept this Declaration. They believe that its provisions are right, and they are willing to accept the terms that our enemy may sink their ships under the conditions stated.

SIR R. FINLAY. Are the United States willing to ratify the Declaration?

MR. McKENNA. The United States will ratify it.

SIR R. FINLAY. How do you know?

MR. McKENNA. I am informed so. I am informed that the United States approve the terms of the Declaration.

SIR R. FINLAY. Are the United States willing to ratify whether this country ratifies or not?

MR. McKENNA. No, sir, I am not informed of that, nor do I think it is very material to my argument. My right honourable friend reminds me that the United States Government have pressed us to act, and by pressing us to act they have indicated to us in the plainest terms possible that they approve of the conditions laid down in the Declaration of London.

SIR R. FINLAY. The right honourable gentleman has stated a fact. Will the right honourable gentleman produce the papers? Are you willing to produce the papers that have been quoted?

MR. McKENNA. Papers have not been quoted.

SIR R. FINLAY. The right honourable gentleman will pardon me. He has stated a fact. Will he produce the paper to the House?

MR. McKENNA. I have not stated the fact on certain papers at all. I have made a communication to the House on the authority of my

right honourable friend. It may or may not be in the have been communicated by word of mouth, and the organ to quoting would not apply, as the right honourable gentleman well knows. I have not quoted from any document. PROV. United States approves of the terms of this Declaration of Law why are they likely to go to war because one of their ships is treated in a manner which they declare they think is the proper manner for neutral ships to be treated under these conditions? It is really an outrage upon common sense to suppose that we alone of all the powers are affected, not by the actual terms of the Declaration, but by a sort of moral influence which the existence of the terms is going to have upon other powers in preventing them from joining in a war in our defence. That is the sole argument that is used. If we ratify this Declaration, neutral powers, who would otherwise be aggrieved, who would otherwise not get the benefits which neutral powers obtain under this Declaration, would be induced to go to war with our enemy because they would not get the advantage which neutrals receive.

It is a view which, I think, is extraordinarily far-fetched, and which is believed by the action of all the foreign powers who are signatories to the convention. I think that disposes of the main points dealt with by the right honourable gentleman. The honourable and learned member for York (Mr. Butcher) asked me as to the opinions of the expert advisers of the Admiralty. He has for a long time expressed considerable anxiety on the matter, and has asked many questions across the floor of the House. I am perfectly willing to give him the information for which he asks. In this matter of international law, under the practice of the Admiralty and the division of business with the Admiralty, the expert adviser is the officer whom we call the Director of Naval Intelligence. He is always an admiral of distinction, considerable distinction, and his office, which is outside the board, is one of the most important offices which we have at the Admiralty. I know the opinion for certain of four Directors of Naval Intelligence on this point, and I believe I know the opinion, though I am not quite certain of it, of a fifth. I do not know the opinions of any others, but those four, whose opinions I know, and the fifth, whose opinion I believe I know, are unanimously in favour of the Declaration of London.

MR. BIGLAND. Members of the board?

MR. McKENNA. Those are not members of the board. The Directors of Naval Intelligence are expert officers who advise the board on this particular branch of Admiralty work.

MR. WYNDHAM. The right honourable gentleman misunderstands the question of the honourable and learned member for York. He asked for the opinion of the experts on the Admiralty Board. You

have given the opinion of the Directors of Naval Intelligence, and are not on the Admiralty Board.

Mr. McKENNA. I have nothing to conceal. The right honourable gentleman is anxious about the point, and I will come to it fully in due course. The question I have been asked is the opinions of the expert advisers of the Admiralty. I gave him, therefore, in the first instance, the opinions of the expert advisers of the Admiralty on this particular branch of work, the Directors of Naval Intelligence, whose opinions are of more weight because they are experts, and of more weight than those of many distinguished admirals who write to the newspapers, and who have not made a deep study of matters of this kind. Of all the Directors of Naval Intelligence that I have been able to discuss the question with, certainly four, and a fifth whose opinions I believe I know, are in favour of this Declaration. I do not know the opinions of any more, but so far as I am aware—

SIR F. BANBURY. How many are there?

Mr. McKENNA. There is only one Director of Naval Intelligence, the officer who advises the Board of Admiralty upon these matters and questions of this kind. I have discussed the question with four different gentlemen who at one time or another have been Directors of Naval Intelligence, and I have had the advantage of hearing the opinion of a fifth. Naturally they cover a period of a great many years, and they are unanimously in favour of the Declaration of London. So much for expert opinion first of all.

Mr. BUTCHER. Is Admiral Slade in favour of the Declaration?

Mr. McKENNA. I have the opinion of Admiral Slade strongly in favour of the Declaration of London. If the honourable member doubts my word I will show the opinion to him.

Mr. BUTCHER. I do not doubt the right honourable gentleman's statement, but I am astonished after what I have read.

Mr. McKENNA. Then we come to members of the board. I have stated, and I repeat, that the Board of Admiralty support the Declaration of London. The honorable and learned gentleman is not satisfied with that. He wants now, according to the right honorable gentleman (Mr. Wyndham) the opinion of the expert members of the board. Questions like this Declaration of London come within the special department of the First Sea Lord. There have been two First Sea Lords who have been concerned with the Declaration of London—first Lord Fisher and then Sir Arthur Wilson. Both are in favor of it. I only mention these facts because a great many questions have been addressed to me from the other side of the House always upon the supposition that I have something to conceal, and that because I refuse to disclose the opinions of members of the board they must be against me. I mention it now only after a long delay, and with the express warning, if I may be allowed to give it to the

House, that it would be found in practice most unfortunate if there were quoted the opinion of particular members who are not members either of this House or of the other House, and able to speak for themselves. I have never varied my opinion upon that point; but I have been pressed by the honorable and learned member, who has pressed me up to the point of saying that the whole of the navy are opposed to the Declaration. No distinguished officer, whose opinion upon a technical subject of this kind is worth any more than the opinion of the man in the street, is against the Declaration of London. Naval officers vary in their views, but upon the construction of a treaty of this kind naval opinion in general is not likely to be well informed. The experts in the navy are very well informed, extremely well informed, and they are in favor of the Declaration. I never saw a more wanton suggestion made in this House or out of it, that the navy—or, as I have seen it in print—that the whole navy is opposed to the Declaration—

And it being 11 of the clock, the debate stood adjourned.

Debate to be resumed to-morrow (Thursday).

JUNE 29, 1911.¹

NAVAL PRIZE BILL—DECLARATION OF LONDON.

Order read for resuming adjourned debate on amendment to question [28th June], "That the bill be now read a second time."

Which amendment was, to leave out from the word "That" to the end of the question, in order to add instead thereof the words, "in view of the strong expression of independent expert opinion on the part of many important business and commercial bodies and of high naval authorities against the ratification of the Declaration of London, and in view of the fact that the Declaration, if ratified, will be binding on this country for at least 12 years, this House declines to proceed further with the naval prize bill until the whole question has been submitted to and reported on by a commission of experts to be appointed for that purpose." [Mr. Butcher.]²

Question again proposed, "That the words proposed to be left out stand part of the question." Debate resumed.

The FIRST LORD OF THE ADMIRALTY (Mr. McKenna). I had almost finished the point on which I was addressing the House last night. I was then endeavoring to show that naval expert opinion, so far as I am aware of it, is not opposed to the Declaration of London. I should like to say at once that it has been brought to my notice that

¹ 27 H. C. Deb., 5 s., 574.

² See *ante*, p. 32.

I have been reported in more than one newspaper as having said that the opinion of an officer is of no more value than the opinion of the man in the street. Let me say at once that that is a misreport and quite misrepresents what I said. What I did say was that upon the technical side of this question the opinion of a naval officer who was not an expert upon the technical part was of no more value than the opinion of the man in the street, but I also added that the opinion of expert naval officers who have studied and are familiar with the expert side of this question is of the very highest value. There has been circulated to, I suppose, every member of this House as to myself, a document containing resolutions against the Declaration of London and signed by 120 admirals.¹ The name of a British admiral carries, and rightly carries, the very greatest weight with the British public. When anyone receives a circular signed by 120 British admirals he would naturally attach the very greatest importance to the opinions expressed in the circular, but if the public are not to be misled as to the opinions of the British Navy upon this subject, I think they ought to be informed precisely as to the degree of weight which should attach to the totality of the names appended to this document. It would be most unfortunate if it should become the practice for retired British admirals who number, I believe, upwards of 250, to be canvassed and their opinions sought in a way which savors very much of the methods of ordinary political controversy in order to impress public opinion outside. Most reluctantly, in consequence of the methods which have been pursued on the present occasion, I have felt myself obliged to examine this list and to convey to the House, at any rate, my opinion of the amount of weight which should be attached to the collective opinions of the 120 names so gathered together. Of these 120 admirals, 65 retired before reaching that rank and were only promoted on the retired list.

CAPTAIN FABER. May I interrupt for one moment?

MR. SPEAKER. The right honorable gentleman should be allowed to continue the debate in the ordinary manner.

¹ At a meeting of Admirals convened at the Westminster Palace Hotel, June 19, by Lord Beresford, the following resolution was passed:

"Resolved that at this meeting, representing the opinions of 102 Admirals of His Majesty's Fleet, view with grave concern the menace offered to the naval and commercial interests of the Empire by the provisions of the Declaration of London, particularly so far as they relate to the sinking of neutral vessels carrying food to the United Kingdom, and to the failure to secure the denial of the right of conversion of merchantmen into ships of war on the high seas without previous warning. The Declaration sacrifices those maritime rights which have preserved our Empire for centuries and renders far more difficult the Navy's task of protecting the trade routes in time of war.

"And that this meeting calls upon the Government to submit the said Declaration to a Select Committee, or Royal Commission, composed of independent representatives of the Navy and of British mercantile and shipping interests, assisted by authorities in International Law, for consideration and report before consenting to its ratification."

Subsequently a number of Admirals who were not present at the meeting added their names to the list. *The Times*, London, June 26, 1911.

Mr. McKENNA. Of the 65, 18 retired as commanders and 47 retired as captains. My first point is that this list would look very different if it appeared as a list not of 120 admirals, but of 18 commanders, 47 captains, and 55 admirals. That is the first correction which has to be made as to the 120 admirals as representing the opinions of flag officers as ordinarily understood. Of the remaining 55, 27 reached the rank of admiral on the active list, but were never employed in that rank, so that of the 120 admirals we have 28 who have served in the capacity of admirals. Of these 28, 5 are rear-admirals not on the active list at all, so that out of the 120 admirals—a most formidable array in their collective capacity—the list is reduced to 23 who have ever hoisted their flag as admirals.

VISCOUNT HELMSLEY.¹ Do they include Admiral Lambton?

Mr. McKENNA. No; he is not one of those who signed the document.

Mr. SPEAKER. I would suggest that the noble lord should follow the usual practice and allow the right honorable gentleman to continue.

Mr. McKENNA. I am only endeavouring to deal with the document which I have received, and in which it is sought to impress public opinion by the collective views of the 120 admirals. There remain then 23 admirals who have hoisted their flags. Of these, 12 served only as junior flag officers for not more than two years. My list then is reduced to 11. The remaining 11 include names of much distinction, and their opinion is entitled, as that of admirals of experience afloat, to all the weight that is to be attached to the opinion of distinguished officers who have had their very great career. But I have said enough, I think, to show that all the weight that the public have got to attach to this document as the opinion of flag officers of experience is such weight as they will give to the individual opinions of the individual officers, who alone have hoisted their flags as officers, and who alone can be supposed to have the administrative experience as admirals who, but for this explanation, the public might suppose, hastily, would attach to every name on the list. I felt myself obliged to refer to this point because there has been made outside a very strong effort to mislead the public into the opinion that the whole navy is opposed to the Declaration of London. I have said enough to show that while the great bulk of the navy and almost without exception the whole of the officers on the active list have not expressed opinions—

VISCOUNT HELMSLEY. How could they?

Mr. McKENNA. The noble lord asks how could they. He has already named one who has expressed an opinion.

VISCOUNT HELMSLEY. Half pay.

¹ Conservative.

Mr. McKenna. I said on the active list. I did not say on active service. I said with very few exceptions every naval officer on the active list has very properly refrained from expressing an opinion one way or the other. I think, as those officers on the retired list which have been canvassed, in order that the weight of their names might be brought to bear against the policy of the Government, it is very necessary to show precisely what weight ought to be attached to their conjoint pronouncement.

I have only one point now to mention. Last night I undertook to show that of the foodstuffs brought into this country in time of war there would be a larger percentage than ever carried in British ships. It is common ground that in time of peace 90 per cent of the foodstuffs which reach this country come in British ships. Only 10 per cent is carried in foreign ships, which might be neutrals in time of war. If the same proportions were maintained in time of war as in time of peace; thus in any circumstances the Declaration of London could only affect 10 per cent of the foodstuffs coming to this country, as the Declaration deals only with the relations between belligerents and neutrals. But in time of war, as a fact, a larger percentage than 90 per cent would be brought in British ships; and I will explain very briefly why.

Roughly speaking, there is only sufficient shipping in the world to carry the total trade of the world. At the present time a considerable proportion of British shipping is engaged in the carrying trade between foreign ports. On the other hand, a certain amount of foreign shipping is engaged in the carrying trade between British and foreign ports. On the outbreak of war in which Great Britain was engaged all British shipping, whether engaged in the carrying trade to British ports or engaged exclusively in the carrying trade between neutral ports, would all be subject to war risks, and the rate of insurance on British ships wherever they were carrying on their trade would be very considerably increased. With regard to foreign ships the same circumstances would not apply. Neutral ships engaged in trade between British and foreign ports would certainly have to pay some higher insurance whatever the trade, because they would always be liable to be stopped and to be searched. If they were engaged in carrying contraband goods or conditional contraband goods the war risks would be increased very considerably. On the other hand, neutral ships engaged in trading between neutral ports only would have to pay no war risks. It would follow from that that neutral ships engaged in trading between neutral ports would be able to compete most successfully with British ships trading between neutral ports. The one would have to pay war risks and the other would not. The effect would be that British ships would be driven out of the trade between neutral ports, and, on the other hand, foreign ships

would be driven out of the trade or induced to relinquish the trade between British ports and foreign ports.

Mr. BONAR LAW. It would be a question which was most profitable.¹

Mr. McKENNA. It would certainly be a question which was the most profitable. I will remind the right honourable gentleman that British and foreign ships are now competing in all branches of trade. Under the conditions of war, neutral ships trading between neutral ports would get an advantage which they do not now possess as against British ships; they would get an advantage in war which they have not got now; they would be able to take lower freights and to make equal profits. Therefore in the competition between British and foreign ships, trading between neutral ports, the inevitable tendency would be to drive British ships out of that trade and to give that trade to foreign ships. We have started on the assumption that there is only enough shipping generally all over the world to carry on the trade of the world. If British ships are driven out of the trade between neutral ports, and that the work of the British ships is done by neutral ships, it must follow that British ships will have to do more of the work of trading to British ports. I think the argument perfectly clear and conclusive, that in the event of war the general effect of the imposition of war risks will be to compel British trade to be carried more and more in British ships, and foreign trade—that is to say, trade between neutral ports—will be carried more and more in foreign ships. That was the only outstanding point which I left over from last night. Let me say in conclusion that I have only attempted to deal with this question from the point of view of the Admiralty in the case in which this country would be engaged in war. I have looked at the Declaration of London only as it would affect this country as a belligerent. But it must not be forgotten that there is a much wider point of view from which this question must be regarded. We should gain greatly under the Declaration as neutrals, but further and of still greater importance than our gaining as belligerents or as neutrals, we have got to remember that the Declaration of London marks one step further forward in the process of bringing nations together and teaching them the duty of settling any outstanding quarrels by arrangement instead of by war. I welcome this Declaration of London from every point of view. In speaking on behalf of the Admiralty I have only argued the question on the basis of Great Britain as a belligerent, but for my own sake I wish also to make the statement that I welcome the Declaration

¹ Although he was not well known by the country at large, A. Bonar Law had made an admirable record as a debater in the House of Commons, of which he had been a member since 1900. He was appointed to no high official position, but upon Mr. Balfour's resignation in November, 1911, he was elected to succeed Mr. Balfour as leader of the Unionist party in the lower chamber.

of London, even more than in that point of view, as a step forward in the general work of arbitration.

Mr. WYNDHAM. The First Lord of the Admiralty, in his concluding words, thought it proper to explain to the House why he confined almost the whole of his speech to defending the position of the Government in respect of the case of Great Britain as a belligerent. But I do not think that any explanation was necessary. It was his duty, if I may say so, to rebut the attack on the Declaration of London which has been made by those who feel that it prejudices our position in the possible event of our becoming belligerent. His concluding observations were that he attached as much importance to other views, namely, the gain which they have secured for neutrals and the advance which they hope to make in what I may call the interests of humanity at large. We on this side of the House believe that the interests of this country as a possible belligerent coincide with the interests of neutrals and coincide with the progress of the civilization of the methods of war. I only make that observation in order that the right honourable gentleman should not suppose that we have less regard than he has for the rights of neutrals in time of war, or for making some advance in the civilization of the methods of war. The right honourable gentleman devoted to the conclusion of his speech this afternoon a considerable amount of time in discounting the opinion of British admirals. I must take some notice of that. In his first sentences the right honourable gentleman, resuming what he was saying last night before we adjourned, said naval expert opinion is not opposed to the Declaration of London. When there was some controversy in process last night, the First Lord of the Admiralty instanced Admiral Slade as one of the best experts whom he could find, and that Admiral Slade was in favour of the Declaration of London.

Mr. McKENNA. I must enter my protest here. I did not refer to the name of Admiral Slade. His name was referred to by the honourable and learned member for York (Mr. Butcher), who asked me what was the opinion of Admiral Slade. I replied that the opinion of Admiral Slade was in favour of the Declaration, but I did not first instance the opinion myself.

Mr. WYNDHAM. The right honourable gentleman has repeated the very words I used—except that he did not start the reference. At any rate we will not quarrel about that. What really is important is the opinion of Admiral Slade, and what really is important is the interpretation which we put on the words of the First Lord when he says that this or that admiral, or anyone whose opinion is worth taking into account, is in favour of the Declaration of London. As to that passage of arms which took place between the right honourable gentleman and the honourable and learned member for York, I think we have nothing to gain by settling the individual opinions

of advisers of His Majesty's Government. In the first place there are objections to giving these opinions, and, in the second place, it is impossible—I am not making any charge against the right honourable gentleman—to interpret what he means when he says 'this or that admiral is in favour of the Declaration of London.' We in this House have the right to be the judges of the relative value of this or that part of the Declaration of London, and if an eminent authority of the Admiralty shows his strong opposition to some part of the Declaration of London which we think vital, it is nothing to us to be told by the Government that the admiral is in favour of the Declaration of London. In the correspondence and documents, I think on page 273, we have the view of Admiral Slade, and it is explicit upon a point which we, rightly or wrongly, think of enormous importance. The view of Admiral Slade on the destruction of neutrals is this: He referred—it was not only his own view—to what were also the views of the Government. I assume that the Government was one of the powers whom he mentioned who hold that a neutral ship suspected of carrying contraband and captured on the high seas by a belligerent ship ought not in any case to be destroyed, if the belligerent, for reasons affecting the belligerent, finds it impossible to take the prize into a prize port. That was the view of Admiral Slade, and that was the view of the Government. The right honourable gentleman, I agree, is quite entitled to say that Admiral Slade is in favour of the Declaration of London, if he and his colleagues are still in favour of that view, although his view on that point has been absolutely repudiated. Then I come to the discounting of the opinion of admirals.

Mr. WYNDHAM. I was dealing with the right honourable gentleman's attempt to discount the impression which might be made by what, on the face of it, appeared to be a consensus of opinion on the part of many British admirals against the Declaration of London. He analysed the list of those admirals, and pointed out that many of them had retired from active service so many years ago. But perhaps the most effective argument he used, in order to discount the impression which their opinion might create, was the statement that it had been collected by the ordinary method of political controversy. The amendment before the House is for this purpose—we are asking the Government to allow the Members of the House of Commons to form an opinion untrammelled by the ordinary method of political controversy. If we are to form such an opinion, we are entitled to take into account and to weigh the views of men whose opinion, on the face of it, is entitled to a great measure of respect. Even if it were true—but I do not accept it for a moment—that because of the dates on which they hauled down their flags only 11 of

these admirals are entitled to advise their countrymen in this matter, still I should have said that the opinion of 11 admirals whose worth is acknowledged by the First Lord, is an opinion which the members of this House, hitherto uninstructed on a very complicated matter, ought to have an opportunity of considering and weighing. But I do not want to pursue that further. I think the matter is so grave that we are not making the best use of our time if we bandy the opinion of this man against the opinion of that man. Take the active list. As far as I know Sir Hedworth Lambton as an admiral, and Sir Ian Hamilton as a soldier, are the only two officers on the active list who have come forward, one against and the other in favour of the view of the Government. We certainly gathered from the Secretary of State for War that he saw grave objections to officers on the active list publishing their opinions if they happened to be opposed to the opinion of the Government. So that on the view taken by the Government we have no opportunity, with the single exception of Sir Hedworth Lambton, of discovering what is the view of the admirals on the active list. Out of the admirals not on the active list, we know that 11 are opposed to the view of the Government.

When the First Lord had finished discounting the impression created by this apparent consensus of opinion, he reverted to a portion of the speech which he made last night, as to the effect of the Declaration of London on the help which neutrals might give to the population of this country when straitened for food. I will deal with that when I come to that portion of the right honourable gentleman's speech. But I noted an omission. When he was unable to conclude last night, he said that he would finish his observations briefly this afternoon, and I thought he was going to say a word about blockade. As I wish to be brief, I will not dwell on that omission. Still, speaking as First Lord, he might have told us what the view of the Government was in respect of the provision regarding blockade. As I wish to discuss this grave matter in no party spirit, I will touch upon the question of blockade without any animadversion on the omission from the right honourable gentleman's speech, or on the provision in the Declaration of London. It is very easy for us to do that, because I do not think I am going too far when I say that the question of blockade has become a matter of comparative unimportance owing to the way in which other and far graver questions are dealt with in the Declaration of London. On the face of it I admit that the question of blockade is one which might be happily dealt with by such an instrument. The practice and theory of great powers have differed widely on the question of blockade, and it would have been a good thing to arrive at some harmony. Harmony has been arrived at by a simple device. We have rejected the British and American view of blockade, and submitted for it the French

view. I still think that the British and American view is the better of the two. As we can not go into details, one must be permitted to generalise. I do not think the First Lord will deny that the British Government and the American Government since the Civil War have held that the destination of the ship in the matter of blockade should decide the question, and that, on the other hand, the French Government have always held that a ship was entitled to proceed on the off chance of the blockade not being effective. In substance we have given up the British view and substituted the French view.

But I do not think that is a matter which need cause great anxiety on our part, because the whole question of blockade has become almost obsolete owing to the fact that the Government on the question of foodstuffs as contraband have accepted the German view, and on the question of the destruction of neutrals have accepted the Russian view. Our own view does not come in anywhere. We went into this conference in order, if we could, to persuade other great powers that the British view was one, consonant not only with British interests, but also with the interests of neutrals and of humanity. Certainly, on the last two questions, I think we could make that case good. But it has fallen out, sad to relate, that on these questions our view has not prevailed. Yesterday evening the First Lord of the Admiralty set out to prove, and I think that was the pertinent duty of one holding his office, that British interests, in the case of our being a belligerent, had not suffered or been prejudiced in any way, either by the exclusion from the Declaration of London of the question of the conversion of merchantmen into commerce destroyers, or by the manner in which the question of foodstuffs as contraband of war, and the question of the destruction of neutrals have been treated in that document. Let me take these three points, which are the three capital points that we have to consider. Even if it were true that the Government on other points had achieved something, still, if we had achieved nothing from the British point of view on these three points, I think this would have been an instrument which the House ought not to ratify, and certainly not without a greater opportunity for consideration.

Take the question of foodstuffs as contraband of war. The argument of the First Lord was, in the first place, that we must rely upon our navy to keep the sea in time of war. His argument was that there is nothing in this Declaration of London which in any way prejudices our interests as a belligerent in respect of foodstuffs as conditional contraband of war, because unless we can keep the sea nothing else matters. I am not going to enlarge this debate by asking whether we are in as good a position to keep the sea relatively as we were 30, 40, or 50 years ago, though on a general survey of the whole question that is a consideration which would have to be taken into

account. The second argument was that the Declaration of London does not affect belligerents *inter se*. That is quite true, but where does it carry us? If you are at war with another power you can do nothing more. War is the last sanction of diplomacy. If you are at war there is nothing more to be said or done. So that if a belligerent, our opponent, captures a ship, and says that foodstuffs are conditional contraband, we can not say, "We will go to war with you," because we are at war with them already. What we have to consider is whether the likelihood of a belligerent so treating food will be greater or less if we ratify the Declaration of London. That is the whole point. Therefore, those arguments are not very pertinent to the debate. Therefore, we may very carefully consider whether the ratification of this instrument would injure us and at the same time injure neutrals. On this point our interests as possible belligerents coincide exactly with the interests of any neutrals in any war, even in a war in which we are not engaged. In order to prove that we should not suffer indirectly, the right honourable gentleman said that nine ships out of every ten carrying foodstuffs to this country in time of peace are British ships. When he was speaking last night somebody interrupted and asked, "What about time of war?" He answered that the proportion would be greater in time of war. I think it would be if the Declaration of London is ratified. After this Declaration I think any neutral would think once or twice or ten times before it attempted to supplement British ships in the, to us, vital service of carrying foodstuffs to this country. But if this Declaration is not ratified I do not think that the proportion in time of war would be the same as the proportion in time of peace.

That view was not the view held by some of the eminent Liberal statesmen of the past. I can not give the exact quotation, but I remember perfectly well the late Sir William Harcourt saying in this House, during a debate on the naval estimates, that in time of war we should transfer all our commerce, or a great part of it, to a neutral flag, and then it would be perfectly safe. So that in that day an eminent member of the Liberal Government thought not only that neutrals would continue to help in the carriage of foodstuffs in time of war, but that British merchantmen would convert themselves into neutrals for that purpose. That view has changed. If views on so important a point change in so brief a period, is there not doubt in the matter? And if there is doubt ought there not to be delay? Ought we not to have further guidance at the hands of experts? I am not prepared without further guidance to accept altogether the right honourable gentleman's percentages. Something may be allowed for the fact that in the return ships are determined by number, and not in terms of amount. The honourable gentleman the member for South Worcestershire has directed my attention to

the report of the royal commission on foodstuffs, third volume, Command Paper 2645, 1904. It appears there, from a table put in by Mr. Henry Hozier, secretary of Lloyd's, that on 26th March, 1903—I am not giving ships now, but tons of foodstuffs, and not corn alone, but all foodstuffs on the high seas homeward bound in British ships—the amount was 1,523,000 tons. Not on exactly the same day, but on a date very nearly approaching it, the tons of foodstuffs of all character on foreign ships was 986,000 tons, or 39 per cent, and not 10 per cent. That, at any rate, prevents us from accepting the figures of the right honourable gentleman. Are the figures that I give not worth something in the consideration of this subject?

Mr. McKENNA. Worth nothing.

Mr. WYNDHAM. Why, then, is it worth while for the First Lord of the Admiralty to give the figures he did in argument last night and repeat them this afternoon?

Mr. McKENNA. I said the figures quoted by the right honourable gentleman were worth nothing in this argument, because those figures do not represent the amount imported into this country.

Mr. WYNDHAM. I see what the right honourable gentleman refers to. He is perfectly accurate. You can only take the stream of ocean carriage. I agree; but will he deny; will he assert that the percentages in the total stream coming from western countries to northern Europe are no guide to the percentage coming to this country? Is he prepared to deny that? Well, they are prepared to deny anything, and to assert anything. What we say is that in view of these figures in the report of the royal commission that we are not entitled coolly to ratify this treaty merely because the Government—that is, the Cabinet—are satisfied, when so many admirals and nearly all chambers of commerce are profoundly dissatisfied with the views of the Government. Our case is a case for delay and examination. Every argument which I am adducing is a fair argument for delay and for examination. The right honourable gentleman is confident that as we now carry 90 per cent of the foodstuffs that the proportion will not be altered in time of war except in the direction that we shall carry more, and he begs us to dismiss all our anxiety. I am not going into the intricate arguments with which he supplemented his remarks last night. I think it is sufficient to say this: He declares that British vessels in the case which he takes into account would be driven out of trade because of their war insurance risks, and that neutral ships would be drawn into the trade between neutrals because they were not paying war insurance risks.

Surely if we were at war it would strain the general capacity of our merchant service afloat to do trade with our own country. We need not take any other consideration into account. However that

may be, what we have to decide in this matter is this: Is even 10 per cent—and I put it at no higher figure—of the food supplies of this country in time of war when prices bound up a negligible quantity? Will the aid which neutral ships can give us in time of war be less if this Declaration is ratified? The right honourable gentleman's contention is that we shall be no worse off for the ratification of this instrument. May I apply two tests to it which I think ought to be studied? What, as a matter of fact, has happened in the past in respect of food as conditional contraband of war? Let us ascertain that, and then contrast it with what will not improbably happen in the future if this Declaration is ratified. I am not attempting to deal with the abstruse question of international law, or with theories which this or that power has entertained or asserted. I want to compare what has happened in the past with what may—and we think will—happen in the future if this instrument is ratified. To put it shortly, it is, I think, a true statement of the case to say that the treatment of food as conditional contraband of war in a manner aggressive and injurious to neutrals has been rare in the past, and has been almost always disputed. I add for contrast that if the Declaration of London is ratified cases of such interference with food as conditional contraband of war in neutral vessels will be very frequent, and will be disputable every time they occur. That is a change for the worse.

I would most respectfully invite the Foreign Secretary to give us some reassurances upon that point. What has actually happened in the past? I am informed by one authority, one upon whom we may rely—and I do not know how we can value authorities unless we have delay and opportunity of debate—how we are to distinguish between the value of one authority and another—I do not know whether the Government altogether discounts the authority of Dr. Baty. He is a writer, a late civil law Fellow of University College and joint general secretary of the International Law Association. He says:

Never a cargo of foodstuffs had been captured over some two centuries without being paid for, except as a confessed illegality.

That is from a man whose business is to know this subject. His opinion is entitled to be weighed. We are speaking from general experience. I can pretend to no greater authority. Is it not true that until the event of the late Russo-Japanese War in 1904-5 the only guide to the question of food supply as conditional contraband of war was the question in which France was involved when she blockaded China in 1885? What happened? M. Ferry took one view. Lord Granville protested vigorously against it. A letter from Prince Bismarck has been quoted in this debate in order to show

that M. Ferry was right and that Lord Granville was wrong. When the Government went into this matter their intention was that Lord Granville should be right and Prince Bismarck wrong. The two tests which I think we must apply in order to decide this question as to whether we shall be worse or better off are these: Is it probable that future practice will be worse than the historic account of past practice, and also, are the results obtained by the Government those covered in the intention with which the Government went into the conference with the other powers? Notoriously that is not the case. I will argue the merits if the right honorable gentleman thinks it worth while, but that has been done so well by others that why should I? What will be the position in the light of articles 24 (1), 33 and 34, which turn upon the question of destination? Destination is to be decided by this fact whether foodstuffs go to a Government department, a dealer, or to a place serving as a base. I need not repeat the arguments which have been used, but is it not evident that all these terms separately, and above all taken together, constitute a great enlargement of the view for which we have contended—and rightly contended—namely, that foodstuffs can not be contraband of war unless they are destined for the forces of the enemy? That has been our contention, and it was in order to get that view accepted by the world that the Government went into this matter at all. They did not get it accepted. At the second peace conference at The Hague the Government sought to abolish conditional contraband altogether. It was with that intention they started out. They came back with foodstuffs put as the first article of conditional contraband, and conditional contraband so defined that I really believe a court might well decide that food was contraband on many occasions when they never would have so interpreted it before, and when a naval captain would certainly so decide. If that be so we shall be worse off as belligerents. We will be worse off as neutrals if this treaty is ratified in respect of foodstuffs as conditional contraband.

I pass rapidly to the second capital point in this matter to which the right honorable gentleman addressed himself yesterday—the destruction of neutrals. May I apply the same two tests to the provision of this instrument which deals with the destruction of neutrals? What has been the practice in the past? What will be the probable practice in the future? Until in 1904-5 Russia destroyed neutral ships can the Government produce in the history of 100 years many cases, any cases, of the destruction of neutral ships? I know that the Foreign Secretary has used language which would lead one to suppose that he holds that during the Napoleonic war we were guilty of sinking four American neutral ships. It is contended by other authorities that these ships were not neutral ships at all;

but enemies' ships. Between the Napoleonic war when we, it has been asserted by some, destroyed four neutral ships, and the events of 1904-5, when Russia undoubtedly sunk some neutral ships, can the right honorable gentleman produce many, or any, instances during 100 years of the destruction of neutral vessels? I do not believe he can. That is the past. What is liable to happen in the future under this Declaration of London? Chapter 4 is devoted to this specific subject of the destruction of neutral ships. One article says: "They are not to be destroyed." But before I come to the exact article in the Declaration, may I add that the destruction of neutral ships by Russia in those years was viewed with astonishment, and something approaching to horror in this country, and, indeed, throughout the world. The right honourable gentleman the leader of the opposition said in this House that "it was entirely contrary to the practice of nations," and elsewhere he stated our opposition to the destruction of neutrals, under any circumstances. "From which position," said the right honourable gentleman, "there is no, I will not say 'probability,' but 'possibility,' of our receding." Why are we now practically receding? What has happened to induce this country, which has always declared that neutrals ought not to be destroyed, to recede from that position?

Will the ratification of the Declaration injure our interests and the interests of the world in that matter? Article 48 begins by saying that neutrals are not to be destroyed; article 49 has an exception and says they may be destroyed if the ship capturing them can not take them into port without danger to the success of its operations. Now this is going to be interpreted by a court, but it is going to be interpreted also by the captain of the ship which captures the neutral, and I declare in these two articles if ratified we not only recede from the position upheld by Lord Lansdowne in 1904-5, and by Lord Granville, but by every British statesman and officer and every responsible leader of the opposition, and as a matter of fact and practice is an injury to the cause of humanity. And here again I apply the second test: what were the intentions of the Government when they first entered into these negotiations? They wished to abolish the destruction of neutrals or rather to prevent the recurrence of destruction of neutrals as in 1904-5. Their representatives say such were our intentions, and the result represents compromise. What was the compromise? The compromise was that we surrendered the historic British view and substituted for it the Russian view which astonished the world in 1904-5.

I have quoted Admiral Slade, our representative, and it is clear that the intention of the Government was to prevent a recurrence of these evils. I have dealt first, altering the order of the speech of the First Lord of the Admiralty, with two points which are covered

by the Declaration of London, namely, foodstuffs as conditional contraband, and the destruction of neutrals, and I hold that the probable result of the ratification will be that the practice in the future will be worse than the practice in the past, because having tried to persuade the world that the British view is the more humane view, as well as consonant with our own interests, the Government accepted in one case the German view and in the other the Russian view. The First Lord of the Admiralty, speaking yesterday, dealt first with the point of capital importance not included in the Declaration, namely the conversion of merchantmen into commerce destroyers in time of war, and the argument of the First Lord was that the ratification of the Declaration could make no difference at all, because the Declaration of London does not touch the matter. Is that so? What would the view of the court be of an instrument of that character which consecrates the German view and the Russian view upon two points, and upon this third point shows that the world were unable to accept the British view? The intentions of the Government in this matter were clear, and if right honorable gentlemen opposite do not accept that statement I will elaborate it. They are instituting a court, we do not know what legal procedure that court will follow, but probably if it is a court at all it will interpret this code, and it will find that this code deals with two specific subjects, and that upon another the powers excluded it from the sphere of their consideration.

Lawyers always declare that there is danger in definition; and having defined two things, and not a third the latter goes to the wall. You have included foodstuffs, and given away a great deal; you have included the destruction of neutrals and given away a great deal, and having been able to effect nothing in connection with the conversion of merchantmen into destroyers, will not the court hold that is a matter upon which the world has been unable to agree, and upon which British opinion has been utterly waived? Now apply the test. In the past that was called privateering. What will it be called in the future? Apply the second test. What were your intentions upon this matter? Your intentions upon this matter were, if you could you wanted to persuade other powers that merchantmen ought not to be converted into warships in the high seas. What does the Government's representative say?

We did not fail to put forward the arguments which, in the view of His Majesty's Government, militate against that recognition of an unrestricted right on conversion on the high seas. * * * We were met by a refusal to make any concession.

Now, how do we stand in regard to the three capital matters—foodstuffs as a conditional contraband, the destruction of neutrals, and the conversion of merchantmen into ships of war in the high

seas? Our interests as belligerents are identical with the interests of humanity. On all these three points the British Government have for centuries insisted that their view is the right one in the interest of civilization. On all these three points, although we wielded the undisputed supremacy of the sea, we had acted in a humane and civilised manner, and have been able in a great measure to impress our views upon the world, because of holding the supremacy of the sea, and in order to get these views consecrated by the other great powers of the world, the Government entered into this conference, and upon every one of these points the British views have been thrown to the wind, and views are adopted against which we always protested in the past. If that account be, I will not say true, but even plausible, and I assure the right honourable gentleman opposite that it is my view, while I admit their intentions were laudable, I regret they did not succeed, and if they did not succeed, is it wise that this House should ratify that policy without further delaying examination?

The Government by allowing us this debate, and by giving us another day, are, I assume, inviting us to confer with them upon this matter. They give us the right, they conceded to the Prime Ministers of the sister States, but in limiting this debate to three days, they deny the opportunity for full consideration, and by the announcement that the determination of this House on this matter is to be decided by party allegiance and not by conviction, they are really asserting the right of the Government themselves to ratify this treaty without consulting the representatives of the people. That is a right which the Crown exercises; it is a right conceded to the Government by this House, but it is a right which this House has always most jealously regarded, and I doubt that it could be maintained except on the ground of urgency or secrecy. Neither of these apply here. Here we have documents, and I ask why not examine them in the light of expert opinion? There is no urgency whatever. No other country has ratified this instrument yet, and so we have another view put forward, namely, that the Declaration is an advance in the interests of humanity, and of safeguarding neutrals and civilising war, and that an advance has been gained without prejudice to us as belligerents. We do not see that. Is it not doubtful, at any rate that that is so when on three points, namely, foodstuffs, neutrals, and the conversion of merchantmen which affect our interest, you failed? Had you not better wait and try to exercise your arts of persuasion again?

Mr. HOLT. Perhaps I may be allowed, as the representative of one of the great interests affected, namely, the shipping interest, to say a few words in this debate? First of all, I should like to suggest to the House, whether in the long dispute that has been going on be-

tween belligerents and neutrals as to their rights, we are to take our stand upon the side of the belligerents or upon the side of the neutrals. And I venture to think that although we have in the past taken up a very extreme attitude as to the rights of belligerents, we should now throw ourselves wholeheartedly upon the side of the neutrals in these disputes. I do not think it at all likely that this country will be engaged in anything like frequent wars in the future. There is probably no country which has taken so strong a line, except the United States, in the direction of trying to procure a settlement of international disputes by arbitration and not by war. I believe this policy is in accord with the views of all sections of the House, and, therefore, it should follow, and must follow, that, so far as we are concerned, a very small number of disputes will be required to be settled by war, and that every step, where we get rid of the arbitrament of war, it must necessarily follow our interests are with the neutrals, and not as belligerents. It must also be borne in mind that about half of the merchantmen commerce of the world belongs to us, and in case of war with the powers our interest as neutrals must be very large indeed. I think that this Declaration does embody very valuable principles and its discussion makes a very considerable step forward from our point of view. First of all, I should like to put my view with regard to neutrals. The right honorable gentleman who has just sat down told us that as far as our interest in regard to the importation of food is concerned, if we were belligerents, they are not less than our interests as neutrals, that what was good for us as neutrals was good for us also as belligerents.

Mr. WYNDHAM. What was good for us as belligerents is good for others as neutrals.

Mr. HOLT. That what was good for us as neutrals helps us as regards receiving assistance for neutrals when we are belligerents. Therefore, if we look at this instrument from the point of view of ourselves as neutrals it will show that as belligerents we should derive advantage from it. We are, first of all, to define what contraband is. Hitherto it has been open to any belligerent to publish its own list of contraband at the beginning of war. In future it can not do that. It is quite true that, although the list of contraband is not all we could wish, it marks a very considerable advance upon the present state of affairs. After all, when you go into an international conference of any description, you can not surely hope to come out with everything gained in your own direction and nothing conceded to satisfy anybody else. We have another great advantage under this instrument, namely, an appeal to an international prize court. It is all very well to have the most beautiful code of rules and a fair list of contraband published by a foreign State, but if their own law courts are going to interpret them, such concession

may prove in practice to be useless. Let me give an instance of my own experience. My firm are owners of a vessel which was apprehended during the Russo-Japanese War. She was taken by Russia and was brought to Vladivostok. The authorities there could not condemn the ship as more than half her cargo was not consigned to Japan. What did they do? In the first instance they decided that certain ice-making machinery was contraband, because it might be used for loading cartridges. I have not the least idea of how ice-making machinery could be used for such a purpose, but the court in their own interests decided in their own favor. If a question of that sort has to be decided it is of immense importance that it is going to be decided in a fair and impartial court. In the case I alluded to the larger part of the cargo consisted of timber, and it was held that timber was contraband, because it could be used for building a pier for the shipping of stores. There were also 30 or 50 bales of cotton, the remains of a large consignment, which was actually consigned to a spinning company. This was declared to be contraband because it might be used for making guncotton. The appeal court found that this cotton must be regarded as contraband because if they had not done so we should have had a claim for compensation, and they gave this decision to prevent my company having a good and valid claim for compensation. That kind of thing could not exist in an international court. Without saying anything that goes beyond the bounds of civility to foreign powers, I think everybody must recognize that in a great many foreign countries the judicial bench has not got the same independence that we enjoy in this country, because the judges there are looked upon more as servants of the Government, a state of affairs which no one would suggest exists here.

With regard to the destruction of neutrals the right honorable gentleman said that we had given away our position on that subject, but I do not think we have. The Declaration lays down that neutrals can only be destroyed as a matter of urgent necessity and as an exception. If it can only be done as the exception it may safely be said that no international prize court would uphold the practice complained of. It has got to be done as an exception and justified by exceptional circumstances. It is all very well for the right honorable gentleman the leader of the opposition to say that we have always protested against it most vigorously. This happened when he was in power and his Government protested most vigorously. That is exactly all they did, and they finally ended by acquiescing in the situation. In regard to this matter right honorable gentlemen opposite used great words and very fine language, but they took no steps to stop it, and what is the use of telling us now to protest against this and the other when all the time, while the right honorable gentleman and

his colleagues were in office, they let it go on? As a matter of fact the only effectual thing that could have been done was to declare war. [Honorable members: "No, no."] That is the only thing which could have been done to stop the sinking of neutral ships, and I say that it would have been absolutely monstrous to involve this country in war simply for the sinking of a comparatively small number of ships. It would have been absolutely wrong to go to war on that account, but there would have been no other way out of it. Under the instrument provided in this Declaration you do get the remedy of a trial in what is in fact an impartial international court, and I say that that is a very considerable step forward from our point of view.

I wish to say a word or two upon the question of the supply of food to this country when we are belligerents. We are told that in some mysterious way our adhesion to the Declaration of London will damage our prospects of getting food brought into this country by neutral ships when we are at war. Let us consider that point in detail. It must be assumed, if you are at war with some other nation, and it must be assumed that the nations we are likely to be at war with are so powerful as to cause us serious inconvenience. We must imagine a case of war against a serious naval force. Now, I think that the only naval force that now exists which could possibly give us any real difficulty in keeping the seas clear would be a combination of Germany and France. I think that is the only possible combination, leaving the United States out of the question, that could seriously affect British ships coming to our shores. Let us assume that the countries I have mentioned are our enemies. Who, then, are the neutrals? The neutral ships will be those of Norway, Sweden, and Holland. I do not think there are any other ships worth mentioning in this respect. Does anybody mean to tell me that the neutrals of Norway, Sweden, and Holland are not in a far stronger position under the Declaration of London. You have to consider who the neutrals are. You have also to consider what the means of the particular owners are to bring diplomatic pressure. It is true that the United States or Germany might bring diplomatic pressure to bear successfully, but it does not follow that Norway, Sweden, and Holland would be in a similar position. It is the smaller powers upon whom we have to rely for neutral service in time of war.

After all the United States has got no shipping which they can possibly bring supplies to our country, and we should all die of starvation long before we could get such a service from America. Considerable discussion has taken place between the First Lord of the Admiralty and the right honorable gentleman the member for Dover (Mr. Wyndham) as to the proportion of our food supplies which comes to this country in neutral ships. For myself I should think 10

per cent is much more than likely to be correct than 30 per cent, but this is not in the least material. Let us assume that even 50 per cent of our supplies could be brought in foreign neutral ships. That leaves 50 per cent still to come in British ships, and we should be short by half of our food supply. How could we possibly exist under such circumstances? If we can not bring food supplies into this country by British ships in time of war, it is absolutely immaterial what happens to the neutrals. We are hopelessly done anyhow, and it is not worth considering whether this Declaration does or does not help to bring neutral commerce in time of war to these shores. I do not think it makes any difference, for it is only a question of whether we are going to be hanged for a sheep or a lamb.

The question of the conversion of merchantmen into war ships is not really a subject of any great magnitude. Does anybody really believe that there is an immense quantity of foreign merchantmen sailing about the seas already to be converted into warships? I only wish our foreign competitors were in that position, because the company I represent would have a first-rate time if these other ships were all hampered with cannons and magazines. Under those circumstances nothing would give me greater pleasure, and I should be quite certain of making a considerable fortune very rapidly. The conversion which has been alluded to only took place with regard to particular ships which were deliberately built for the purpose of conversion, which everybody knew were going to be converted on the high seas as soon as they possibly could. That is actually what took place, and any intelligent Admiralty would have the common sense to watch those ships as war ship. I think of all the bugbears we have heard of this one of the peaceful merchantman on the high seas coming from New York to Hamburg with 20 millionaires on board, and a thousand other American citizens, suddenly being armed with guns and popping at British ships is the most ludicrous fantasy that has ever been heard of.

Mr. BALFOUR. Why did the Government protest against it?

Mr. HOLT. They protested because it is quite right to protest against it. A man has no right to continue to do what is objectionable and say that after all I have only done it to a very small extent. It is a very trifling matter altogether. Something has been said about the view of the commercial world on this question, and it has been stated that the representatives of the trading and commercial community are opposed to this Declaration. That is not a statement which strictly speaking can be justified. The honorable and learned member for York (Mr. Butcher) in the speech he made last night said that the shipowners of various places, including Liverpool, were opposed to this Declaration. I am sorry the honorable and learned member is not present, because I should like to

have asked him what his authority was for making that statement in reference to Liverpool. I am under the impression that the Liverpool Steamship Owners' Association passed a resolution in favour of the Declaration of London, but if I am mistaken on that point, I certainly know that they have passed no resolution against the Declaration.

I find upon looking through a list of the supporters of the Declaration many gentlemen who consented to serve upon a general committee to consider this question. If we may look upon Lord Pirrie as authorised to speak for the well-known companies he represents then we may claim that such companies as the White Star, the Royal Mail Line, and the Elder Dempster Company are in favour of the Declaration. We have got on the committee I have alluded to representatives of the Orient Line, the Union Castle Line, the Cunard and Harrison Lines, the British India Company, and several other very important trading companies. Really that is a very fair representative lot of those interested in shipping, and if honorable members will inquire what they have got represented in that little knot I think they may very well leave the rest to other people. I should be very satisfied to take that list under my management, and I should consider I had got the pick of the mercantile marine. There is absolutely no foundation for the statement that the preponderating body of opinion among shipowners is opposed to the ratification of the Declaration of London. Those of us who have had experience in regard to the Russo-Japanese War have considered this question very carefully, and most of us have decided to throw the whole of our weight in favour of the ratification of this Declaration.

* * * I am very much obliged to the House for listening to me so kindly, and I sincerely hope we shall succeed in carrying this bill and with it the Declaration of London.

SIR ALFRED CRIPPS.¹ I should like at the outset to refer to the speech of the First Lord of the Admiralty (Mr. McKenna), because I think it would strike everyone that the views of the First Lord of the Admiralty upon a matter of this kind ought to have great weight both with the House and with the country. The First Lord of the Admiralty suggested that we on our side had been under a very great misunderstanding as regards the purport and meaning of the Declaration of London as comprised in the naval prize bill. It appears to me the misunderstanding is entirely on the side of the First Lord of the Admiralty, and I am glad to see both the Secretary of State for Foreign Affairs (Sir E. Grey) and the Attorney-General (Sir Rufus Isaacs) present, because this is a point of the greatest importance. The first Lord of the Admiralty pointed out

¹ Conservative.

that the Declaration of London is not a code which applies as between belligerents, but as between belligerents and neutrals. I have noticed from the many papers issued from the Foreign Office in answer to representations made by chambers of commerce and others that they have supposed chambers of commerce have made a mistake in considering the Declaration of London a code between belligerents, and not as a code limited as between neutrals and belligerents. I do not think that mistake has ever been made. I think I have read all the documents issued by the various chambers of commerce and shipping authorities, and that mistake has not been made in a single one of them. I could not understand the mistake in the first instance, but I appreciate it now since the speech of the First Lord of the Admiralty. It has arisen not with the critics of the Declaration, but with those who are maintaining the value of the Declaration, and in my opinion the First Lord of the Admiralty, according to the speech he made, did not appreciate what it really means. Of course, it is quite true nobody is going to argue for a moment that it is not a code as between belligerents. As between belligerents in the future, as in the past, *inter arma silent leges*. It is a question of war and not a question of prize courts or of an international prize court. The First Lord of the Admiralty went wrong, and was misleading here. He inferred from that fact, which no one is likely to deny for an instant, that the Declaration of London did not materially affect us in our position as belligerents. If there is one thing more certain than another—and this is my strong reason for directing the criticisms, I shall make against the code contained in the Declaration of London—it is that our position as belligerents is vitally affected by the law laid down in the Declaration—I mean the law as between neutrals on the one side and belligerents on the other. I join issue entirely with the views of the First Lord of the Admiralty. He defines the law which would be in force as between neutrals and the enemy powers, and I believe the law as between neutrals and the enemy powers, whether for good or bad, has, and necessarily must have, the most material bearing upon the position of this country when a belligerent.

I hope I do not disagree with what I may call general humanitarian principles or with the general principle of international arbitration or an international prize court, but I do say our first duty, in considering the effect of the Declaration of London and the code therein contained, is to consider whether, when we are in a belligerent position and our national existence may be at stake, it alters the existing law to our disadvantage or not. It can be demonstrably shown that every change made as regards the law as between neutrals and belligerents and as regards international matters is

vitality to the disadvantage of this country when we are in the position of a belligerent power. When the First Lord of the Admiralty speaks about the instructions he would give to the captains of belligerent vessels if we were at war, and says those instructions would not be affected whether the Declaration of London is passed or not, I say he entirely misunderstands both the meaning of the Declaration and also the meaning of our criticisms against it. Does he mean that, after accepting an international code and an international prize court, he is going to give instructions to commanders of war vessels in this country that they are to disregard that code and the decisions of that court? If he does not mean that, what was it he meant when he said that, although we were discussing these questions, yet in a state of war it would merely depend whether we had the force to carry out our wishes or not? We are criticised as not being in favour of an international tribunal and an international code. If the view expressed by the First Lord of the Admiralty is right, we are producing nothing more than a fraud and a sham if we hold ourselves free on the first occasion of war to disregard the code and the decisions of the international tribunal. I hope we shall not be put in a position of that kind. When we give instructions to our own commanders of vessels as regards their relationship towards neutrals, shall we hold ourselves bound by the international prize code and the decisions of the international prize court? I assume the answer will be in the affirmative, although I think the whole basis of the speech of the First Lord of the Admiralty was that it will be in the negative.

The Attorney-General (Sir Rufus Isaacs) indicated dissent.

SIR A. CRIPPS. What does that mean? I will take his own illustration. I will take the case of a merchantman converted during the course of its voyage into a foreign vessel of war. Of course, so far as that is a foreign vessel of war it will, as between us and the enemy power, be in the same position as any other war vessel. It will be subject to capture and attack. No one has ever denied, or will deny, that proposition. What will be the position as regards neutrals in respect of a vessel which during the course of its voyage is converted from a merchantman into a war vessel? If we allow that principle to be adopted, whatever instructions we may give to our commanders and whatever attitude we may take up upon a question of this kind, every foreign power will have the opportunity, and, if the international prize court takes their view, will have the right, to our detriment and to the detriment of neutral powers at large, of allowing merchantmen to be converted during their voyage into vessels of war. Surely the position we have taken up in these matters, particularly when it is in accordance with what are called humanitarian views

and in accordance with the rights and interests of neutrals, ought to have due weight. We have always said a merchantman can not be converted into a ship of war after leaving the port. No one will deny that. What is the position to be in the case of a war between us and another country. I hope we shall not depart from the principle we have always laid down, I think, in the interests of neutrals and of humanity, if I may use such a large term, and shall observe the rule that if a merchantman is to be converted into a ship of war it must be converted before it leaves the port. How about our enemy? Our enemy will be justified, if the international prize court gives a decision in that direction, in maintaining exactly the opposite proposition. They will have the power of harassing neutrals in a way which we think unjust and unfair. Can anyone deny that the Declaration of London would operate to the detriment of neutrals and in addition would operate to our disadvantage as a belligerent if neutral vessels were treated by us in a different way from what they were treated by the enemy power?

The First Lord of the Admiralty seemed to think that decisions given by the international prize court as regards neutral bodies other than ourselves would not be binding upon this country. That is an impossible attitude to take, but I listened very carefully to what the right honorable gentleman said yesterday, and it is the attitude which the First Lord of the Admiralty takes. I am delighted to see the learned Attorney-General shakes his head, because you might build up before this international prize court a series of rules and law which might be entirely detrimental to the interest of this country and in which we might have no voice and on which our opinions and views might never have been heard at all. The First Lord of the Admiralty says we shall not be affected as belligerents by these decisions between neutrals and other powers. Of course we shall be affected. What the court lays down will be the international law on these points. Am I to be told by the First Lord of the Admiralty, who of all persons ought to be accurate on a matter of this kind, that while other powers are bound by the decisions of the international prize court our commanders and cruisers are to go free? I am sure he can not mean that, but that is what he says, and it was on that ground he criticised the speech of my right honorable friend, who was Attorney-General under the late administration (Sir R. Finlay) when he pointed out, I think most justly, that under the court as constituted we have really no guarantee that either the just rights of neutrals or the just rights of this country as a belligerent will be fairly and properly considered.

Before coming to the three points with which I want to deal as regards the matters contained in the Declaration itself, may I say one word as regards the international prize court. This is a matter

I hope the learned Attorney-General will deal with when he comes to speak later on. The provision is that the international prize court fully constituted shall consist of 15 members, and that as many as 9 members shall be required for a quorum. Eight members of the court will be representative of what I may call the great powers; the other 7 will come from powers which either have no interest whatever in these maritime questions or which have an interest which is absolutely immaterial for the purposes of considering the position of a great maritime power like this, and a matter might come to be decided in the court which would affect our belligerent position for all time by a majority of representatives from Haiti and San Domingo, and other small American Republics. I am not against the constitution of an international prize court, but I say it is all important that, if we are to have such a court, it should be properly constituted and properly manned. I do not believe that anyone with any experience of courts, either as regards the way in which they act or the way in which they are constituted, can say it is right that our interests as a belligerent on some of the most crucial and critical points should be decided by these small Central American Republics which have no interest in maritime questions, and have practically no navy, and whose representatives of whom I do not want to speak with disrespect, are not likely to have the smallest experience in these matters. Why should the whole policy of this country be decided by the representatives of Haiti or San Domingo. But take an older country like Turkey. I do not want to say anything harsh about Turkey, but she looks at most of these questions from a different standpoint to ourselves. We are advanced in matters of maritime law, we have given a lead to the rest of the world, and the decisions of our courts are quoted.

SIR RUFUS ISAACS. Are they followed?

SIR A. CRIPPS. I will later on show how far they are followed on crucial points. You have at the present time a maritime law in this country which has been laid down by leading authorities, and which is referred to even if it is not wholly followed by all countries as a model of what maritime decisions ought to be. Are you going to put it at the mercy of the representatives of small Central American Republics who necessarily have no knowledge of maritime legal procedure and have no interests in that direction, because they are not maritime countries. I am putting this from the point of view of the neutral as well as of the belligerent. We have been on the whole the great protector of neutral commerce in the past. Our code of maritime law is more favourable to neutrals than the code of any other country. Why should we subject it to such a tribunal as is proposed here? It is, I say, a most reactionary proposal. Would it not be better to have a court constituted of men with a great knowledge of maritime law

and of representatives of a country which has taken a leading part in humanitarian dealing with neutrals, as we have done for so many centuries?

I want to come to close quarters with what the Attorney-General said just now with regard to our law being followed. I want to take the question of the conditional contraband of foodstuffs. I want to show how the proposals of the Declaration of London are to a greater or a lesser extent wholly detrimental to the position of this country, and wholly detrimental to the interests of neutrals in any part of the world. The present position is this: Whether a cargo is contraband or not is determined by the destination of the cargo, and not by the destination of the ship. What is the first alteration made? The alteration of the greatest importance, and one to the disadvantage of this country as regards conditional contraband, is that in future it is to be the destination of the vessel and not the destination of the cargo! Let me explain what that means. Take the case of Germany. Germany is entirely exempt from any liability for the capture of foodstuffs under the term of conditional contraband, because the vessel will be going to a neutral port, say Rotterdam. In the case of war, of course, all such cargoes would be consigned through neutral ports. Under these conditions, if you had foodstuffs being carried in a neutral vessel for victualling a ship of war which was just going to start out in order to carry on depredations against the vessels of this country, no doubt that would be contraband, but if you take the Declaration of London as it stands it absolutely frees every continental power likely to be our enemy from any liability or risk in this respect. That is absolutely the case. So long as a neutral vessel under these circumstances is chartered in a neutral port no question can arise. That is in itself decisive, and, instead of taking the common-sense view, instead of merely considering the destination of the vessel, you should consider what is the real destination of the cargo. Even such an authority as Mr. Cohen, who in many ways supports the Declaration of London, admits there is no reason for this distinction between absolute and conditional contraband. The fact is, as regards foodstuffs, any enemy against whom we might be engaged would be held absolutely free from any risk as regards confiscation of foodstuffs carried for the benefit of their armies so long as it was carried in neutral vessels.

Let us consider our position as an island power. I agree with the view put forward by the London Chamber of Commerce that transshipment is impossible. I may quote in this respect what has been said by the shipping associations of the United Kingdom. They say that to their knowledge in neutral ports this idea of transshipment is not possible, because there are no facilities and no docks in which the transshipment can be carried out. After all, this is practically

a commercial question. All foodstuffs coming into this country in time of war, apart from transshipment, must be consigned to a port in this country. That is a fact, and it is, under the Declaration of London, possible for every ounce of foodstuffs brought to this country to be treated as contraband. What we have to consider first of all, when dealing with neutrals, is are they likely to desire to carry foodstuffs for us, or will they prefer to carry them for our enemies? If they choose the latter, they are under no liability; their ships are not liable to be seized. If they prefer to carry it for us, it is no imaginary risk at all. At the present time conditional contraband only becomes liable to confiscation and capture if it is intended for the use of naval and military forces, but this Declaration has introduced a distinction which will in every case cause the question to be raised whether it is conditional contraband or not.

This matter has not to be decided by the prize court in the first instance. It has first to be decided by the commanders of the enemy's vessels. I am not going to suggest any special wickedness in their case, but it is not quite reasonable to suppose that where there is any doubt at all they will decide in the sense of confiscating the cargo, even at the risk that two or three years later on the court may order compensation to be paid. But such compensation would not be given to us if our corn were seized during time of war; or were prevented from coming to this country in a neutral vessel; and I think I am right in saying that under such circumstances we should get starvation, or somewhere very near the limits of starvation: that is what it means to us.

What is said in the Declaration of London? I think I can quote almost the actual terms "if it comes to the base of operations." M. Renault tells us that that means the base of operations or supply. The view of the Government is that M. Renault's explanation is part of the document itself, and it will be seen at once how that will effect this country, in the case of our being at war. I do not believe there is a single big port in this country which would not be sufficiently connected either with military or naval operations in order to bring it within a definition of that sort. I want the Attorney-General to bear with me in this argument. He may say that the answer sent by the foreign office to the extremely able paper on the Declaration of London furnished by the Glasgow Chamber of Commerce is sufficient. That chamber of commerce asked the Foreign Office—Will Glasgow, in the case of war, be regarded as a base or not? That was a most vital question. What was the only answer the Foreign Office could give—"We can not tell you, as that will depend upon the decision of the international prize court." What does that mean? It means that instead of having a certainty to refer to, there will be doubt whether a port comes within the definition of the base of

operations or supply. In the case of war this country would be, like a beleaguered fortress, badly provisioned; in fact, we have only provisions for a very short time. It is but midsummer madness to ratify a declaration which as regards this question of corn supply puts us indubitably in a worse position than we are at present.* Let me deal with the question of neutrals. I do not agree with what was said by the First Lord of the Admiralty or with his commercial calculations. I am at issue with him in regard to both of them. What is said in the memorandum published by the shipping community of the United Kingdom is this, and I believe it to be perfectly true, that in the case of war we shall be more dependent upon the import of corn in neutral vessels than we are in times of peace, because the conditions are such that owing to the higher rates of freight the neutral vessels will be induced to leave the trade they are carrying on at the moment in order to carry corn for the people of this country.

The honourable member for the Hexham Division of Northumberland (Mr. Holt) went to the length of saying that if 50 per cent of our corn was coming in in neutral vessels we need not mind if that quantity were stopped. I say that is a monstrous proposition. If we were to take away 50 per cent of the corn imported by this country we should have starvation in a few weeks or a month, and yet that was a statement made by the honourable member in favour of the Declaration. We were dealing with 10 per cent coming in neutral ships, but he said that taking 50 per cent we need not be alarmed. I do not think that there are many members on the opposite side who will agree with that. But after all, what are these matters of calculation? According to my view it matters very little whether they are a little more or a little less. We have got to stand for this. We have first of all to stand for the legitimate rights of neutrals, and those are that contraband is to be determined by the destination of the cargo and only to be liable to confiscation if it is going to a naval or military force. But we have extended that doctrine to the detriment of neutrals. Let us look at the matter from the point of view of ourselves as belligerents. Can anyone say that we ought to ratify a Declaration which, to a very material extent, may limit the supply of corn which we get from abroad in time of war? I do not think that one word which has been said upon this subject has been said in a spirit of exaggeration at all. We have to consider our peculiar position as an island power. It is quite true, as the First Lord of the Admiralty said, that we can not change the geographical conditions, but we can put upon ourselves burdens which no rival power will have to bear, and that is what will be done if you ratify the Declaration of London.

Let me take the next matter as regards the sinking of neutral ships. Here again I want to take what was said by the Foreign Minister himself. We have had a good deal of discussion as to what the law is, but the Secretary of State for Foreign Affairs said that for 200 years we have supported what was the right doctrine, namely, that, except in cases of necessity quite outside clause 49 of the Declaration of London, a belligerent power had no right to sink a neutral vessel at all. I am taking the words of the Foreign Secretary himself, and he said that that had been the case for 200 years. I do not want to argue on legal technicalities one way or the other, and I should be prepared in every case to take what was the original statement of the Foreign Minister on these points. But what has been the result? The right honourable gentleman pointed out to the representatives of England how important it was, in his opinion, to maintain a great principle of that kind. He pointed out that it was in the cause of humanity and in the cause of neutrals. Further, he said that we were a great maritime power and had been the leading authority on matters of that kind, and we had adopted that view of the law for the last 200 years. What is the result? Russia brought forward a clause—Russia, who is notoriously reactionary as compared with us in matters of this kind—Russia, against whose action we protested so loudly in the course of the Japanese War, and I believe it was our protest which prevented her going further in the reactionary course of sinking neutrals. Yet we have accepted her clause verbatim, and I do not think there is any difference between the terms of the Declaration of London and the proposal put forward by Russia.

Again I ask the right honourable gentlemen opposite, do they think that we, the foremost country and the most humanitarian country in the world, are to embark upon a reactionary policy because, forsooth, Russia insisted upon her terms as regarded the Declaration? The real truth is this, that the principles are admirably stated as regards conditional contraband, the sinking of neutral ships, and the change of merchantmen into vessels of war by the Foreign Minister himself. There stands upon record his view that the English position is right and ought to be maintained. And what is the result? Why, in every single case of those principles which I agree have been selected as the most crucial questions to debate in order that we may understand where we are—in every single one of them when the true crisis came we gave way to a reactionary power, and were willing to accept what on every ground, having regard to our interests as belligerents or as neutrals, we ought to have resisted. I want to ask the honourable members opposite, do they desire that the old rules under which we protected neutrals shall be preserved or not? Do they desire to ratify a Declaration which puts the neutral

in a worse position than he is in at the present time? If so, then let them vote for the Declaration of London, which attacks the position of this country. After all, if this country is in a state of war, it is not a question of mere humanitarianism or generalisation of principles.

The question is whether we can preserve our national existence or not. Let me put this question to honourable members: Do they think that a Declaration ought to be ratified which on these material points affects the importation of corn into this country when we are under conditions of war, and when it is well known that, so far as this country itself is concerned, we are provisioned for only a short time? It has been said, in fact, that we are only provisioned for a period of six weeks. But whether it is more or less, what I protest against in the interests of the millions of artisans and workers in this country is that we, the House of Commons, should for one moment consent to ratify a Declaration which puts us in a worse position as regards the price and the facility in the transit of corn than we are at present. The sacrifice of the principles to which I have referred will either make the cost of freight to this country immeasurably higher¹ or else will prove prohibitive in regard to the importation of corn in neutrals. It is on those grounds that I hope that the Declaration of London may not be ratified until its proposals have been more clearly appreciated, and I think, if there is one argument which is the strongest possible argument why further discussion is necessary, it is that the First Lord of the Admiralty, who, above all men in this country, ought to have appreciated the purport and meaning of the Declaration, has shown that as regards those facts which are of great interest to this country he has obtained a false idea. Upon these grounds, when the time comes I shall vote most heartily for the amendment.

Mr. DICKINSON.¹ I do not propose to comment at once upon the somewhat lurid picture which has been drawn by my honourable and learned friend in his speech just now of the terrible condition of affairs which he expects will hold good if this Declaration is ratified. I can not help thinking that if he had given as careful attention to the legal aspect of the case as he has to the sentimental aspect of it he could not have made the speech which he has done. I hope, in the course of a few remarks which I have to make to this House, to show how very overdrawn his views on this question are. No one can deny that this subject is one of supreme importance; from different points of view it is of great importance. I venture to think that from none is it more important than from the point of view of our position with regard to all the nations of the world if we refuse to ratify this Declaration. May I be allowed shortly to call the attention of the

¹ Liberal.

House to the historical position. When the second Hague Conference was being invited to assemble by the Czar of Russia in 1907 an invitation was sent to us and to other nations to attend, and a rough programme was laid before those who were invited to attend. Our Government accepted that invitation, but specifically pointed out that they wished to reserve the right to add to the subjects on this programme, and in the instructions that were given to Sir Edward Fry, who was the principal representative of this country, are these words:

His Majesty's Government, however, are anxious to secure the adaptation of the machinery of the existing tribunal which was created by the convention to the purposes of an international tribunal of appeal from the decisions of belligerent prize courts affecting neutrals.

After pointing out some of the details in regard to that subject, they said:

His Majesty's Government consider that if The Hague Conference accomplishes no other object than the constitution of such a tribunal it will render an inestimable service to civilization and mankind.

In accordance with those instructions at the first meeting of The Hague Conference our representative, Sir Edward Fry, announced that he had instructions from his Government to ask permission to add to the programme the question of the appointment of the prize court tribunal, and also that he was provided with a detailed scheme for settling this question. The representative of Germany stated that he had similar instructions, and he had similar proposals to make before the conference, and the representative of the United States of America cordially joined in the appeal to the conference to add this question to their programme. This was done unanimously, and in accordance with it a committee sat and considered the question in detail, and brought up a report, which was adopted in September, 1907. It was adopted in the presence of the representatives of 44 different countries in the world, and 37 voted in favor and one only against. This action of the conference was practically unanimous, and Sir Edward Fry, with the authority, I assume, of the Government, at the last meeting of the conference used these words:

Of all the projects that we have adopted the most remarkable in my opinion is that of the prize court, because this is the first time in the history of the world that there has been organized a court truly international. International law of to-day is hardly anything but a chaos of opinions which are often contradictory and of decisions of national courts based upon national laws. We hope to see little by little in the future a system of truly international law form itself round this court which will owe its existence to principles of justice and equity alone, and which in consequence will command not only the admiration of the world, but the respect and obedience of civilized nations.

The Government of this country approved of that statement, and wrote a letter fully justifying this observation, but inasmuch as the

provisions of the convention laid it down that one of the matters upon which the court has to decide was the existing international law, our Government asked that before the convention was ratified some attempt at agreement at what is international law should be made by the powers, and that attempt has resulted in the preparation of this Declaration. The Declaration contains no fewer than 71 articles, and the comments which have been made in this debate show that the matters at issue range round not more than three or four of these articles, and I submit that if on questions like that we who started this proposal, who pressed it on, who elaborated it, and who instituted the convention which brought about this Declaration, go back on it, we shall do an inestimable disadvantage to the march of civilization all over the world. We shall show that it is no use bringing together the nations to discuss these questions, because we are the first to say that because it affects us to a slight extent detrimentally we will have nothing to do with the agreement. I think that position is one of very great importance. I do not deny that there might be cases in which the result to this or any country might be so serious and momentous that it would justify us in going back upon this whole question, but the discussion we have had in the country for the last six months, and the debate of yesterday and to-day, have shown no such vastly important results to this country as would justify us in taking a course which would undoubtedly lead to the result that the nations would give up as hopeless any attempt to come to an international agreement. None of the objections which have been raised possess the seriousness and weight which would have entitled us to take so momentous an action.

I would like to deal with two or three of the objections which have been raised by the speakers of yesterday and to-day. There is one fact which stands out from this debate above all others, and that is that if we consider the Declaration of London from the point of view of neutrals, there is very little criticism. We have heard next to nothing on that point yesterday and to-day, and if that is so, surely it is a very important matter, for it is the effect upon neutrals that brought about this Declaration and the neutrals are the great mass of the people who will be concerned with this Declaration, and if we find a code of law which is practically admitted as being in favour of the neutral nations of the world, the majority of the world, of course, at the time of any war, we should hesitate very long before we render the whole of this great advantage nugatory to all the neutral nations of the world. The criticism has ranged itself chiefly around the question of what will be our position under the Declaration in the case of our unfortunately being at war. The right honorable gentleman (Sir Robert Finlay) put forward as the first objection the number of members of the prize court and

its constitution. As regards its numbers, he pointed out that such a court as that constituted under the provisions of The Hague tribunal is a better court than the one which is proposed by this convention. It consists of five members, it is smaller, and it was one of the finest tribunals which could be set up, and he preferred that the court which should adjudicate upon this prize law should be somewhat of the same quality and the same numbers. But I think the right honorable gentleman failed to see the difficulties that the conference had before them when they substituted for The Hague Tribunal the prize court as proposed. In the first place, it would have been extremely difficult to establish a court consisting of a small number of judges. The Hague Tribunal consists of five, because it adjudicates upon questions which, in the ordinary course, only affect two possible belligerents, and they choose from the panel of judges two judges each, and an umpire is appointed, making a fifth.

It would have been impossible to adopt this plan, because this court is not to be a temporary court established whenever there is a danger of war, but it is to be a permanent court, ready to take up questions which may come before it, and, moreover, it would be absolutely essential in a court of this nature that the neutral nations of the world should be represented. It is the neutrals who are concerned in cases which will come before this court. All the nations of the world may be represented, and it would be almost impossible to establish a court of four or five members which could be said fairly to command the adhesion of all the nations in the world. That, of course, would have been a very great difficulty, and I can not help thinking that, although we may agree that the number of 15, with a quorum of 9, is rather an excessive number, still it is difficult to see how any better scheme could be proposed. But then he objects to the constitution of this court, and I think there is some ground for complaint in the way in which this question has been treated. I have just had handed to me a document which has been circulated all over the south of London, I understand, in which this statement is made:

Another example of radical misdoing is that they have agreed to the establishment of an international prize court to which the rights of the British Navy during war should be made subject, the judges being principally appointed by little States like Paraguay, Haiti, Roumania, etc.

This criticism has been more or less repeated by my honourable and learned friend (Sir A. Cripps). He took exception to what he said was a proposal to establish a court which would submit our interests to representatives of small South American Republics and others. I think that was a very serious misrepresentation of a plan which was elaborated by a very distinguished body of men, those who assembled at the second Hague Conference and who undoubtedly had these very difficulties in mind, when they constituted this court. The court

is to consist of representatives of eight great powers who are always to sit in the court. Seven are to be appointed occasionally, that is to say there will always be seven, but one year the seven represent one group of powers and next year another group. I have here the arrangement of the States in the way in which they are to compose the court, and I will give the House the names of the nations which will form the court on the first year: England, Germany, France, the United States of America, Russia, Austria, Japan, Italy, Spain, Norway, Holland, Greece, Turkey, the Argentine Republic, and Colombia. The last but one is hardly open to the charge of being a small South American Republic and Colombia is the only one which can be called a small State. A careful arrangement was made so that the smaller States, while having their representation, would have a representation which was really infinitesimal on this court. What is more, the honourable and learned gentleman (Sir A. Cripps) made a point of the fact that Haiti was to be represented. Haiti is to have no judge on the court at all. It is to have a deputy judge. It is to have a right to nominate a judge if Venezuela can not nominate its judge, and therefore the only chance that Haiti ever has of adjudicating in this court is that when there is a war and Venezuela can not send her representative, Haiti shall have a representative. Speeches such as we have just listened to, and documents such as this, which say that judges are to be appointed principally by the little States such as Paraguay and Haiti are a most serious misrepresentation of the work of the second Hague Conference. It should be remembered that these men are not there to represent the interest of countries. They are there as distinguished judges, men who are going to adjudicate upon the rights which individual owners of property have against States, and I can not see why we should not expect as eminent jurists and as highly moral men to be sent by the smaller States as by the greater States. Great States have no monopoly of morality or of intelligence, and I think we shall find the court, when set up, will be just like the court of The Hague tribunal, and will be an assembly of men who will be, as they are intended to be by the words of the Declaration, jurists of known proficiency in international law, and of the highest moral reputation. But will not this court, when we are belligerents, be beneficial to us? The present position is that if a war occurs in which we are engaged the question of prizes are settled by the court of our enemy. The only persons who can argue anything before that court are our enemy and the neutral, or possibly the State to which he belongs. What is going to happen? We are going to have substituted for that a court upon which, for the first time, we are to have an English judge; we are going to have a court upon which the great majority of judges are neutral, and it is only reasonable to anticipate that the tendency to bias, if any, will be in

favour of neutrals, and not in favour of our antagonists. This in itself is a distinct advantage.

The right honourable gentleman (Sir Robert Finlay) also stated yesterday that he did not think the institution of a free list was of great importance. I differ from him very much. I look upon the institution of this free list as really of supreme importance at a time when we are at war. It includes several articles which at times various nations have tried to make contraband. The chief advantage of it to us is that it includes all our raw material, and it would be of inestimable value to us if we are at war that we should have the free import of our raw material. It will give our people the opportunity of continuing to export their produce, and it will give us in return for that work the very money we want at a time when money is most necessary. In addition to that, it may have the result that, inasmuch as our raw materials in neutral bottoms will come in without any fear whatever of being attacked, we shall find neutral vessels bringing raw materials to our shores and largely assisting us in obtaining them without their having to be imported in our own ships, and it will free our own ships for the purpose of bringing food to our shores. There can be no doubt that as regards food, whether in neutral or in our own bottoms, we shall have to protect it with our own navy.

I go further and say in regard to the point to which criticism has been most directed, namely, the effect of this Declaration upon our food supplies, that we actually reap advantage rather than disadvantage. I think, if the debate has made anything clear in this rather complicated question, it is that you ought to discuss the question with full appreciation of what the existing law is. You cannot invent for yourselves what international law is, but you have to bear in mind what the existing law is, and although it has been discussed at great length, I hope the House will forgive me if I make some repetitions on this very important question. The situation when we are at war presents itself to me in this way. Supposing we were at war with Russia or Germany, I think there can be no doubt that both these nations would declare food to be absolute contraband. It would be to their benefit to do so, and for the success of their operations they would do so. It would be of inestimable value to them if they could cut off the food supplies of this country. I do not say whether they could do so legally or not, but they could and I believe they would do it. We know that food has been declared contraband. Several nations take the view that they have the right to declare anything contraband, and they hold that other nations have no right to say "We do not agree to this or that being contraband." Spain in 1898 claimed the right to declare anything contraband. Germany in 1870 declared coal absolute contraband. Russia in 1904

declared rice and provisions contraband. We know from Bismarck's letter that Germany did not object to rice being regarded as contraband. I believe my honourable friend the member for North-West Durham (Mr. Atherley-Jones), told us that Germany had made some change in that respect. The matter has been looked into, and I understand that he was mistaken in what he said about saltpetre. I have here an extract from an article on neutrality in Hortzen-dorff's Handbook of International Law, which says:

Prince Bismarck, in reply to a communication from 33 Hamburg firms, stated on 21st April, 1885, that it was true that the powers concerned indicate in each particular case those articles which, according to the locality and according to their own interests they intend to treat as contraband during the hostilities, but that he shared the opinion expressed in the communication that the former custom of treating saltpetre as contraband would, under present conditions, constitute a purposeless limitation of trade, seeing that saltpetre can not directly serve war-like purposes, but must be rendered serviceable for such purposes by an elaborate process of manufacture for which, in the present condition of warfare, there can hardly be any demand during the war.

There can be no doubt that it would be possible for Germany or Russia to declare food to be absolute contraband. What would be the position if she did? Supposing that the Argentine was sending us food, supposing that Germany declared it to be absolute contraband, and supposing that the Argentine Government protested, the answer would be the same as that given by France to us in the war with China. They would say: "It is not for us to decide, it is for the prize court to decide whether our action is right or wrong." That would be undoubtedly the position taken by Russia or Germany, and in the meantime food would be absolute contraband, and no importer would venture to bring food in neutral bottoms under these circumstances. But supposing we admit they would not urge that food was absolute contraband, there can be no shadow of doubt that Germany and Russia would declare it, and treat it as conditional contraband. They are entitled by international law to do so. What would be the position then? They would make their own rules for their own commanders with reference to this subject. They would lay down not our rules but their own, and they would probably say that all our principal ports were to be considered ports of supply to our army. Honourable members opposite cheer me for making that statement. I am pointing out the existing law, and I am not dealing with the law under the Declaration of London. What then would be the position of the importer of food? He would say: "I am not going to venture on conveying food under these conditions. I know that if caught I shall be taken before a German court and adjudicated upon by Germans. I know they will uphold their own countrymen in the view that this is conditional contraband, and that it ought not to go to any port in England." I venture to sug-

gest that under the Declaration of London the position of the importer is so much better and so much safer that he will risk sending food to this country. It would be paid for very well. It would be very important to us, and everybody would wish to get food in if they could. The importers will be very much safer under the Declaration of London because they will know that if they are caught, they are not going before a German court but before an international court. They will know too that the international court will in all probability decide that they must be compensated. They will know, therefore, that they will in all probability get paid for the food brought in these vessels, whereas under present conditions it is extremely unlikely that they would ever get a penny if they came before a prize court in Germany in the ordinary way.

There are one or two other points upon which we have been told we have either abandoned doctrines or have introduced something which will be very detrimental to ourselves. One of these is what the honorable and learned member for the University of Edinburgh termed the abandonment of the doctrine of continuous voyage. He went at some length into that. He said: "What an enormous advantage is this to Germany." My honorable and learned friend (Sir Alfred Cripps) told us just now in strong words what his opinion is in regard to this change in the law. He said that Germany would get every cargo of her food. I quite agree. I think she will; but every cargo can go to Germany now. There is nothing in our law which could enable us to stop a cargo of food going to Hamburg. There is nothing to prevent that food getting to Germany.

SIR ALFRED CRIPPS. May I correct the honorable gentleman on one point? What I said was that even if it was going under the Declaration of London—if it was going to supply a hostile force in Germany—it would be contraband.

Mr. DICKINSON. I agree that if it was going to a hostile force in Germany, it would be contraband. It is just as impossible for us to stop corn going to Germany now as it will be under the Declaration. With regard to the doctrine of continuous voyage, it is all very well to attach such vast importance to it as was done by the honorable and learned member for the University of Edinburgh, but it is not a doctrine that is accepted at all as a doctrine of international law. It is a doctrine that was started in a very illegitimate way by America, and we accepted it, but I do not know that any other nation accepts it. Our doctrine says that it must be part of a continuous transaction, but this doctrine has been limited to ships taken to one port and out of that port to another. But the proposition that that doctrine can be carried so far as to prevent goods going through Antwerp and being sent on by rail to a continental power is one that we have never tested, and I do not think that our doctrine would

ever carry us so far as that. The honorable member for Durham, in his excellent book, ridicules the idea. The abandonment of the doctrine of continuous voyage as regards food is the abandonment of nothing at all. We are just as well off now as we were before. It should be remembered that we have gained something. We have induced Germany to abandon her doctrine as to absolute contraband. In the case of the capture of the *Bundesrath* Germany insisted that you could not interfere with goods going from one neutral port to another neutral port. There is a great deal to be said for that view, but now Germany has given way on that point, and her representatives practically said that from their point of view this was a very great concession.

As to the destruction of prizes, I think my honorable friend the member from North-West Durham, has put his view of the law on this question much too high. He said that Lord Stowell had laid it down that nothing could justify the sinking of a neutral ship. Lord Stowell never laid that down. He had before him the case of the *Felicity*, and he said:

When the vessel is neutral, the act of destruction can not be justified to the neutral owner by the gravest importance of such an act to the public service of the captor State. To the neutral, it can only be justified, under any such circumstances, by a full restitution in value.

His opinion was that in case of destruction the owner was entitled under any circumstances to compensation, but he never decided that a State might not under any circumstances destroy a vessel, and I believe no one has ever held such a proposition at all. We sent out representatives to argue this question, and I think the honorable and learned gentleman will see that although Admiral Slade made a very able statement of the case, he said at the end that the British Government were willing to consider whether something short of this would not settle the question.

It is perfectly clear that we could not have insisted upon putting that into the Declaration of London, which is a code of existing law, because the great majority of the States deny that it is the law. In the Russo-Japanese War the Russians sank the *Thea*, which was a German ship. Germany did not protest against it because she has always recognized the right that the belligerent has under certain circumstances to sink ships. I believe even with regard to the *Knight Commander*, in which the United States of America had some interest, that Government even did not protest against the sinking of that vessel. You will find that with the exception of Great Britain, Japan, and I think Spain, in none of the memoranda was there the definite assertion that in no circumstances could ships be sunk. They all contemplate certain conditions under which it would

be likely, and even Professor Holland points out that there is nothing to establish the view that in no circumstances is a neutral prize to be sunk. I say that if we had succeeded in putting into this Declaration an absolute prohibition under all circumstances of the destruction of vessels, we should ourselves have made a new international law. It would not be a code of existing international law as was intended.

But after all I think that the greatest criticism that has been brought against this Declaration is one that has not been commented upon greatly in this debate. It was raised by the right honorable gentleman (Mr. Balfour), in his speech in the city the other day.¹ He took the view that this was a retrograde step. That is the whole question. Is it a retrograde step? Because if it is retrograde, and if we are doing something to put back the advance of civilization, then I quite admit that that alters the whole position. The view of the right honourable gentleman was that food for the noncombatant population ought to be absolutely free, and that we had given way to some extent in the wording of that Declaration on that most important point. I quite agree that from the point of view of civilization there is nothing more important than that an enemy should be prohibited from starving a noncombatant population. He also said, as I understood his argument, that our propositions with regard to the destruction of vessels were a step backward rather than in advance, because we have always urged most strongly that in no circumstances should they be destroyed; and, of course, there was a similar observation with regard to the conversion of ships on the high sea. Surely this all depends on what exactly the codifying of the law does. I venture to think that in codifying the law with regard to traffic in food we really have made a great advance. The principle of the Declaration is that food for non-combatant populations should come in free. There is no doubt that food is to be conditional contraband, but conditional contraband is only such goods as are clearly destined for the carrying on of the war. That is a great principle. Even if it is not in the Declaration in so many words, it is in the spirit undoubtedly, because the way in which the subject was treated is to put food into conditional contraband and to define conditional contraband as absolutely limited to what is going to the use of the forces, and then to make certain exceptions. And in the report this comment is made:

The articles included in the list of conditional contraband may serve for peaceful use as well as for hostile purposes. If from the circumstances the peaceful purpose is clear, the capture is not justified.

¹ This refers to Mr. Balfour's Cannon Street Hotel speech of June 27, which was one of the most important non-parliamentary speeches made against the ratification of the Declaration. Cf. *ante*, p. 211, note.

That principle the international court will take into consideration. They will realize that the whole object of this Declaration was to have free food for the non-combatant population, and I believe whenever a case does come before the court, as undoubtedly there will in the case of a war, one of the earliest decisions will forever settle the question about food. It is very much the same thing with regard to the destruction of ships. It is perfectly true that we have claimed, not only in our own interests, but in the interests of humanity, that no ships should be destroyed. We are anxious to see that result come about. Here again I can not help feeling that when one grasps the meaning of sections 48 and 49 one will again see that, not only the spirit but the letter of this Declaration means that a neutral vessel is not to be destroyed. It will be a rule of war that a neutral vessel is not to be destroyed. It is quite true that there are certain exceptions, but the tendency of any court, especially a court consisting of majority of neutrals, will be to say that the rights of neutrals are to be respected. With regard to the conversion of ships on the high sea, if a neutral court decides anything it will probably decide against the claim to convert, because it is neutrals who suffer. If ever this question comes before the international court, I can not help feeling pretty certain that the international court will decide that it is not legal to convert ships; but if it did not so decide, I say that even in that case no harm will have been done, because we shall be left in exactly the same position as we are in at the present time. If it does decide against the claim to convert, then a great advance will have been brought about. So I would say to the right honorable gentleman that the Declaration is an advance in civilization and in the methods of conducting war, and it is to our advantage to accept it, and that knowing the great gain that will accrue to civilization from the adoption of the Declaration, this House ought not to take upon itself the responsibility of rejecting it.

LORD CHARLES BERESFORD. I should like to preface my remarks by answering what the right honorable gentleman (Mr. McKenna) described as the rather thin sneers of the admirals who signed a certain memorandum. I first wish to express this opinion that the seamen, admirals, and officers in the service of the State and the King have no right to point out, either in speeches or in letters, anything that would lead to the inference that they would not obey the orders of the Government. No matter what Government is in power, their business is to obey whatever orders are given them, whatever they may think about those orders. But this is merely a suggestion backed up by a very large number of different institutions, who will all be affected if the Declaration of London is passed, merely asking that the Government should give a little more time and put some experts on some sort of committee or commission to inquire more thoroughly into this

business. The First Lord of the Admiralty was not on very safe ground when he said that these seamen were something like the man in the street as far as their opinions on these subjects were concerned. Very large numbers of us have very considerable experience, and a large number of us have drawn attention to various questions, and we have always been proved to be correct on every single occasion. The First Lord of the Admiralty can not say that one single agitation that we conducted for strengthening the fleet was ever incorrect, and that what was asked had not to be done eventually. This applies to even the late strengthening of the fleet, owing to the representations made principally by the seamen. But I must also remind the First Lord of the Admiralty that these names are public; that the wishes expressed are public, and well known to all our countrymen. The First Lord of the Admiralty gets behind what he calls the silent fleet, because he knows perfectly well that no officer commanding, on full pay, would give his opinion if he were asked, because it is his duty not to do so. But the right honorable gentleman makes the statement that the navy is not opposed to this Declaration. Who is most likely to know the opinion of our brother officers? Men who have retired, who have been with them every day, or the First Lord of the Admiralty? I make this statement, that the navy, as far as I know its opinion, which it can not express, is most decidedly against the Declaration of London. The right honorable gentleman (Mr. McKinnon Wood) opposite laughs. He may see something to amuse him.

MR. MCKINNON WOOD. I beg the noble lord's pardon. I was laughing because I could not understand if officers on active service must not express their opinions why they should be quoted by the noble lord, or how he quoted them.

LORD C. BERESFORD. That is perfectly justifiable. The First Lord of the Admiralty has led us to infer as strongly as he can that the officers on full pay accept this Declaration.

MR. MCKENNA. I have made no such statement. I have said that the expert members, the Directors of Naval Intelligence, whom I consulted, were in favour of it.

LORD C. BERESFORD. I beg the right honourable gentleman's pardon. As I read what he said last night, if it is correct, and as I understand what he said to-day, it is that the navy was not opposed to it. I do not want to fight this question: I only want to be fair in dealing with the matter and to point out that this House must not run away with the idea that these naval officers are doing anything which they have no right to do. They are all retired, and when a man is on half-pay he has a right to give his opinion. I have been in this House for 15 years on half-pay, and I have expressed myself very strongly on many occasions. I have never done anything against discipline, and I have never quoted the navy or said that I was giving the navy's

opinion, and I should not do it now if I had not been rather hurt at what the First Lord of the Admiralty wished us to infer, that the navy was in favour of this Declaration. The First Lord of the Admiralty yesterday, I understand, quoted Admiral Slade. It is an unwise thing, and I must ask the First Lord of the Admiralty not to quote the opinions of experts, to which they can not reply. You may put anything into their mouths. That is a mistake. They are not there to be quoted. The Cabinet is responsible, and nobody else is responsible for the policy adopted. Therefore, it is unfair and unwise to do what has been done on several occasions in this case in the case of Sir Ian Hamilton, and in the case of Admiral Slade. It ought not to be done, but it has been done, and the First Lord by what he said has made a wrong impression entirely on this House, about Admiral Slade. He supported the Declaration of London under certain qualifications, and the qualifications were that at that time the trade routes were not properly defended, and we were very short of cruisers; and as a fact, it was owing to Admiral Slade's strong opinion on this that he was, I will not say turned out, but was taken out of the position of Director of Naval Intelligence and given command of the fleet in the East Indies. That is a fact.

MR. MCKENNA. No.

LORD C. BERESFORD. But I say it is a fact.

MR. MCKENNA. I say it is not.

LORD C. BERESFORD. Then we have the case of Captain Campbell. He had charge of the trade section of the Admiralty. He was very strong in his opinion on this question. Captain Campbell, who held a position in the trade department, and who after a certain time was put on half-pay. These are facts for which I can vouch. If the First Lord of the Admiralty placed the papers on the table, which he knows he will not do, it will be seen that I am correct with regard to Admiral Slade. Admiral Slade merely agreed with the Declaration of London under certain conditions as to the trade routes, which were never fulfilled, and then he went to the East Indies.

MR. MCKENNA. I do not think it is fair to Admiral Slade or to myself that it should go out to the world on the authority of the noble lord that I removed him from his position as Director of Naval Intelligence owing to the fact of his having expressed certain opinions with regard to our trade routes. I can assure the noble lord—and I am the person involved—that I did not remove Admiral Slade from his position for any such reason. It is entirely incorrect.

LORD C. BERESFORD. I still maintain the fact. The right honourable gentleman is extremely clever; he comes in and trails a red herring across the path. My point is this that Admiral Slade, when he agreed with the Declaration of London did so under certain conditions, which were not fulfilled. That was my point. The right

honourable gentleman may shake his head, but I stick to my point. Admiral Slade did go to the East Indies, and I say that was the reason. But I am sure the House will agree that it is inadvisable that points of this kind should be raised in these controversies, and they are not fair to the experts. It had been said very truly that naval officers know nothing about international law. But if it be true that they know nothing about international law, they do know the effect of that law, because they are the people who have to carry it out. They are the people who are responsible for the rapid and punctual delivery of the food supply of this country. It is because so many of us think that this law that we are passing will make it very difficult, if not impossible, for them to carry out the duties which appertain to them of insuring the rapid and punctual delivery of food, that we make this protest, and respectfully urge the Government to delay the Declaration of London until such time as will enable further inquiry to be made and the provisions of the Declaration to be properly understood. In regard to the whole question, we find that even lawyers are not agreed upon it; nor can I see how any one can agree about it, when we have such a tangled skein before us. We have got a prize court scheme, and numerous conventions, some ratified and some not ratified; we have got the new Geneva Convention, and now we have the Declaration of London on top of them all. Each one hinges on the other, and in the Declaration of London parts of it are entirely contradictory. Clauses 33 and 35 are absolutely contradictory, and many other clauses of the Declaration are very difficult to reconcile one with the other. The whole question is one of our food supply. I should like to devote myself entirely to that aspect of the case, because I am retired now, and can in some degree represent my brother officers who are not retired, and who will be responsible for the safety of our food supplies. It really amounts to this. The trade routes, which are the arteries of our Empire, must be properly defended. My argument is that they are not properly defended, and a great many of my brother officers hold the same view. I will endeavour to prove my point.

All those who are affected either indirectly or immediately by the Declaration of London, insurance companies, shipping companies, chambers of commerce, corn merchants, the mercantile marine, are opposed to this proposal, besides which there is the great body of naval opinion, which is entirely opposed to it. Lawyers and politicians may argue in favour of a new policy to be carried out whether by land or by sea, but when the time comes that the policy is to be made effective, and that will be in time of war, then it is officers and men of the navy who have to carry it out. When there is such a large and varied body of opinion in the country against this Declaration of London, when there are so many who see the

dangers of it. surely it is right that they should make some sort of protest. May I say with all due respect to the legal profession, that the members of it are always looking at what might, should, or could be, whereas seamen take the practical stand, and look at what is. The great point is to look at what is. The arguments in support of this Declaration of London have been ably advanced by lawyers and politicians, who have supported it. Those arguments have been put more clearly than perhaps many of our arguments against the proposal. Lawyers and politicians are extremely clever men, well accustomed to argue, whereas among those who are opposed to it are men like myself, not so well accustomed to argue. For myself I realise that the greatest difficulty is experienced by a man who is not a lawyer when he comes to argue with a lawyer. There are so many points that a lawyer can make which the ordinary man does not think of at the moment. Therefore, those who are opposed to the Declaration of London start to argue on the bad side of the hedge, because they have not made their points so clear as have some of the supporters of the proposal. The whole of the arguments in favour of the Declaration of London have been based on "if." The Secretary for Foreign Affairs, the Prime Minister, the Secretary for War, all based their arguments on "if." "If the fleet is strong enough," and "if we can command control of the sea." That is the whole point.

If the fleet were really strong enough to carry out all its duties we need not care about any Declaration. It would not matter one bit, whatever Declaration there was, of any kind or description. I do not think myself that the fleet is strong enough; and it must be remembered at one time that honorable members opposite said we were unassailable. But why, since that view was expressed, have we spent so much money on our navy? The construction of the German fleet was known ever since 1900, and there was no alteration in their programme, with the exception of the six armoured cruisers added to it. In spite of the view held by honorable members opposite that we were unassailable, what has occurred since shows that they were wrong. I hold that to now say we are unassailable is wrong. Many people in the navy pointed out that the contention that we were unassailable was not right, and that the Government would have to enormously increase the naval estimates. We were right then, and I submit that we are right now when we say that this Declaration of London will jeopardise to a great extent our food supply. Let me deal with the question of the protection of our food supply. We can only protect the trade routes, the arteries of the Empire, by cruisers. That is the only way in which we can make our food supply absolutely safe. I submit that we have not enough cruisers to protect those trade routes. The First Lord of the Admiralty stated some time ago that we had 100

cruisers. That is one of those broad statements which he always makes. We have 100 cruisers, but out of that number there are only 52 in full commission, that is including those vessels on the trade routes; the rest of them have nucleus or skeleton crews in training.

The main point with regard to our trade routes is that they should be guarded against any sudden and secretly organised attack. As I have stated before in this House, such attacks are suddenly and secretly organised, and will be made by armed merchant vessels. Honourable gentlemen opposite laugh at armed merchant vessels. Why laugh? They seem to think that an armed merchantman has to be full of guns and ammunition. It is not so; you have only to put a 12-pounder on board the merchant ship and she can sink the biggest merchant vessel afloat. In regard to the Germans, they already have the emplacements made in their merchant ships; I have seen them with my own two eyes. You can not suddenly convert a merchant ship, because you have to make an emplacement on board. The Germans have done that already, and they have drilled men on the merchant vessels who have all passed through the navy. It requires a very short time to put a gun on board a ship. The idea of an American millionaire with a cargo of guns is not quite sensible; and I think an honourable member opposite spoke of a gun on the flying bridge. That is worthy of opera bouffe. I have heard many statements, which appear to be very feasible, as to our having half the mercantile tonnage of the world, and that if the Germans convert their vessels why can not we do so? That sounds very sensible, but the immediate danger is that the shipper will not fill up a gap should his vessel be lost, because the rates of insurance would be prohibitive. These vessels, too, must have the emplacements ready. **We can not** spare a single man from the fleet. We were so short of men that we had to join 12,900 last year, though the annual wastage is only 6,000, this being owing to false economies in the past. These are the facts. We want the emplacements and we want the guns. I do not say that that is going to be done, but with such a tremendous issue as to any question of our people in their millions being short of their food in this country we have no right to risk it in any way in the world.

I have shown that you can only protect the trade routes by cruisers, and they must be small cruisers. You do not want to send armoured cruisers with 700 or 800 men. Their speed would be too slow. You scrap some of the cruisers without putting anything in their place. You could afford to lose some of the small cruisers which were employed as a protection against armed merchantmen. It is not cruisers which are going out to attack your commerce. If a cruiser goes out you know all about it, and you send two out after it. It is those ships, the merchantmen, that may go out without anybody knowing anything about it, and who may be getting onto the trade routes and

making a concerted attack. You want to have cruisers on the trade routes to prevent that. May I point out to the right honourable gentlemen that both in the country and generally there is a great misunderstanding with regard to the question of the defense of the trade routes and the size of battleships. The policy, the strategy, and the tactics which are employed with regard to battleships are absolutely and entirely different from what is necessary for protected cruisers. Battleships are to fight battles. You try and get alongside the enemy and the best tactician will win, though he may have the smaller fleet. He may win battles, but battles do not always win wars. Our weak point is and always has been and always will be no matter what you do, our trade routes, because we are absolutely dependent on the sea. Every 24 hours we live we get more and more dependent on the sea. I am only touching the question of the food supply, but the right honourable gentleman knows that the workers depend on the raw material. We are getting more and more dependent on this command of the sea. Why I object to the Declaration of London is that it does unquestionably, and I do not think any honourable gentleman will disagree with this—give up what we used to describe as our maritime rights, which are our life, and the only power we ever possessed, and which have kept the Empire for centuries. If you give them up what are you getting in return? You are getting nothing whatever under this Declaration. There is a very great deal being taken from you, and you must acknowledge yourselves you are giving up your maritime rights. You must be giving up your maritime rights if you allow neutrals to be sunk.

You are allowing, by this international law, an enormous amount of things that will affect you and will not affect other nations, and that are affecting your maritime rights and powers. I am trying to make my argument as clear as I can. I am not touching the legal question. I am merely touching the question, as we would look at it as the servants of the State carrying out our orders to the best of our ability. I will take the point of the armed merchantman. I have explained that the armed merchantman is a possibility—I am afraid it is probable. May I ask the right honourable gentleman the Foreign Secretary this question? You made a great point of this at the conference. It was your point of objection. Your delegates were instructed to object to armed merchant ships, and, reading Admiral Slade's report, he is almost crying over it that he did not succeed. The German delegates would not even discuss the question. I ask, if you made such a point of it then why do you say now there is nothing in it? Your instructions were of the most definite character that it was to be opposed by every means possible, and the military powers would not even discuss it. From the seaman's point of view, and really I have studied this for a great many years, I see the very

greatest danger for merchant ships. I am afraid they would have effected their object before you do anything at all, and they will stop shipping. The shipper is the most nervous man in the world. He is always perspiring from the time he puts the stuff on board until he gets it to its destination. He is always very excited about it, and he will not ship at the rate of insurance that will prevail. That is where your danger is. If it was done they would achieve their object, but, says some honourable member, You will soon catch him and put him down. Who is going to catch him? We have not got any cruisers on the trade routes. We have only got 20 now to the 60 we had in 1904. It is quite right to scrap old ships, but never scrap anything which is useful until you put something in its place. The doctrine that battleships are going to protect the trade routes is quite unsound. Battleships and armed cruisers are no more able to do the work of small cruisers and torpedo destroyers than heavy artillery could do the work of cavalry.

Take the naval review.¹ It was the finest sight I suppose anybody has ever seen, and this country ought to be proud of what they saw. May I assure the House not only were those ships good, but **the officers and men have never been equalled**, not only in the zeal to do their work and to get more knowledge, but as well in their loyalty and discipline, and everything that makes a good naval officer and a good naval man, and the sympathy between officers and men is excellent. But what was it you saw? All the papers and all the press said "what a magnificent fleet." So it was, but it was a fleet of armoured ships. There were 32 battleships and 25 armoured cruisers. What did you have as units? You had 9 protected cruisers. I tell you from my experience, for what it is worth, if you go to war you ought to have for every battleship fleet at least 5 protected cruisers to every 2 battleships. You want them for hundreds of duties that the big armoured cruisers can not do, and if you have nothing but heavy armoured ships, as you have got, those ships may be rendered ineffective because they have not got their proper units to do their work. Other experts may not agree with me, but that is my experience in handling fleets and manoeuvres. It was a case of a shortage of cruisers. It was much the same in the days of Nelson. Half his trouble would not have occurred if he had got a clear line of communication. Your line of communication is more necessary than ever because you can work by steam and speed. In the old sailing ship days you might have time to put a thing right, but you have no time to do so now. Our business is not to risk disaster and not to risk war at all, and if we have a fleet sufficient to our needs and well organized in all its units, I believe we should not have any chance of war.

¹ A grand naval review was held in connection with the coronation festivities of June.

Several honorable members opposite say what is the difference between the position now and the position as it was. I conceive it is very different. I will not detain the House, as the matter has been brought forward so clearly, but the position is very different with regard to the capture and destruction of our own ships and neutrals. The right honorable gentleman the member for Dover (Mr. Wyndham) is perfectly right in stating that before 1904 there is no story of a neutral ship being taken and sunk. It was never allowed. It was put down peremptorily if it were ever done or supposed to be done, by the other nations. I make that statement. I am sure somebody will answer me if I am incorrect, but as far as I know a neutral ship was never sunk. She was captured but never sunk. [An honorable member: "Oh, yes."] I have never heard of it. Then there is the question of the neutral ship, and the question of an indemnity. We are to go to a court and get an indemnity if anything is done that should not be done. May I ask any honorable member if he thinks that any captain of a fighting ship worth his salt is going to study what the law about the question is? When he is allowed any reasonable doubt, which is the term used, to put down every ship he sees on the horizon do you not suppose he would have a reasonable doubt about everything? Both myself and my brother officers if we saw 20 ships that would cut off the enemy's food supply, and if we were hanged for putting them down we would put them down all the same. Our business is to defeat the enemy. You have qualified it by saying a man has a reasonable doubt. Of course he will have a reasonable doubt. He will put down every ship he sees, whether neutral or the enemy's ship. And then we are told there is to be an indemnity, and the indemnity will come two or three years after the war. What is the use of an indemnity if the action of those foreign officers stopped your food supply, and made your country starve? There is no object in an indemnity then, and the indemnity does not come to us, it comes to the people who ship the corn.

Therefore under every condition of affairs from my point of view we must be much worse off now than we were—as we were before. I am afraid I do not explain myself very well. My point is, we are worse or would be worse if the Declaration of London becomes ratified than we were under the old scheme of working under the Declaration of Paris when privateering was abolished. I think you will find you are helping privateering although the lawyers may not think so. Those who have got to do the work that the lawyers enact do think so. When we go to war the whole of it will fall on us, and we shall not hear much more of you. Then there is the question of blockade. Honorable members will remember the time of the "dreadnaught" arrogance, as I have on several times described it, when we boasted so much and provoked so much irritation abroad. We were told

that we had everything in our hands, because we had sealed up the North Sea. Where is the sealing up under this proposal? The seal is broken. The blockade is not effective. It is not a blockade, because you can not blockade. You can not touch anything that is outside, and you can touch no ship going to a neutral port. Therefore, that "swank" is done for. Here is another thing the House ought to inquire into. I must go back for a moment to the armoured cruisers. The right honorable gentleman in his speech yesterday said with some sort of pride that it was not in the Declaration of London at all. Why is it not? If the Government made such a point of it at The Hague Conference, which was on the Declaration of London, why did they not put it in? They say they have left it open. It is left open so that the arming of merchant ships can be carried out, and I say it will be carried out by an enemy in the future. Then to take another point. Why have you allowed a foreign captain to take your sick and wounded out of your own hospital ships and make them prisoners? I say that that is infamous. I do not think anybody will allow it. I, and so would my brother officers, would sink any man who dared to touch our sick and wounded. It is a monstrous thing. What has it made possible? It makes it possible for an enemy to take our sick and wounded out of our hospital ships and put them into a collier, and then to put his own sick and wounded into our hospital ships. I say that that is monstrous. In any case we ought to get rid of that clause.

Mr. McKENNA. What clause is that?

LORD C. BERESFORD. It is in the convention, I think. I read it in the press.

Mr. McKENNA. It is not in the Declaration of London.

LORD C. BERESFORD. No, it is not in the Declaration of London. These things that you want to carry in a subtle way you do not put in the Declaration. That is what I object to. The matter is so mixed up that even the great legal magnates can not make head or tail of it. Then how can we? It is in a convention that on the demand of the enemy's captain we have to deliver up our sick and wounded in a hospital ship. I can assure the right honorable gentlemen that I am right; I read it most carefully. The second peace conference (conventions) bill, clause 4, says:

The master of any British ship having on board any sick, wounded, or shipwrecked men, being combatants who have been rescued during or after a naval engagement in which they have taken part, shall, on demand being made in person by or on behalf of a commissioned officer actually in command of a warship of any of the belligerent States, deliver to him all such men.

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS. (Sir Edward Grey). Does the noble lord quote the prize court convention or the Declaration of London?

LORD C. BERESFORD. This is a convention which, I believe, has been ratified. It is not in the prize court. It is not in the Declaration of London. Whatever it is in, our sick and wounded are liable to be treated in this way. It is a Government proposal, and I say it is an infamous proposal. Under the Declaration of London I maintain that our dangers are increased and our protection decreased, principally owing to the scrapping of those cruisers which ought to be on the trade routes now. The First Lord of the Admiralty says that the navy is adequate to protect the trade routes and to ensure sufficient food for the people during the war. But he has never told us how. He says that the fleet is sufficient. I maintain that you can not guard trade routes with heavy armoured ships and heavy battleships. Your armoured cruisers have to work as armoured cruisers in fleets or small squadrons. The battleships will have to work in fleets. The battleships and the armoured cruisers are to fight battles, which is an altogether different thing from the policy and the strategy necessary to defend the trade routes. The First Lord of the Admiralty has on previous occasion recognised this fact. My complaint is that he has done nothing to meet it. On 16th of March, 1906, he said:

Our commerce, if unprotected in war in both seas will be open to attack by foreign armed merchant ships specially commissioned for the purpose as ships of war.

That disposes of the argument that it can not be done—an argument used by gentlemen who sit behind the First Lord.

Mr. McKenna made an observation which was inaudible in the press gallery.

LORD C. BERESFORD. I agree; but what in the name of Heaven is the use of saying that something ought not to be done if it will be done? Most certainly it will be done. When the Government made it their great point, why did they not say that they would not ratify the Declaration at all? I do not for one moment accuse the Government of wanting to lose the Empire. They are as earnest as I am in wishing to save the Empire, but they are going the right way to lose it. The First Lord of the Admiralty knows that if these ships are transformed at sea, if at one moment a ship is a merchant ship and the next a man-of-war, if they go out as merchant ships, get to the station they want to reach, and put down in one afternoon six or eight of our ships, their job is done, and what does it matter if they are sunk the day after? If the Government saw the danger and sent their delegates to The Hague to object, why in the name of fortune do they want us and everybody to agree to ratify this Declaration? It is the weak point in the whole business. If they saw no danger in it the First Lord of the Admiralty would not have made that remark. If they saw no danger in it the Secretary of State for Foreign Affairs would not have made such a point of it at The Hague Conference.

The First Lord says that he is going to wait and see. You may do that about some things, but you can not afford to wait and see any attacks on your trade routes.

The First Lord in answering a question of mine a little while ago said that they would wait until the circumstances occurred. That is the same as a man telling you he is going to put a fire service in his house after the house is alight. It will be too late once our trade routes are cut. If we could get over the first 12 weeks I would not be unhappy about it. But I am absolutely certain that if you in any way stop for a short time the food coming into this country there will be such a panic that you will have something akin to a revolution. You have no right in the world to risk it. The only way you can protect the trade routes is by a policy, strategy and tactics totally different from those for fighting a battle. I have already referred to the naval review. It is as though I took the right honourable gentleman down to Aldershot and told him there was the finest army in the world, but that it consisted of nothing but heavy artillery. The fleet is like an army. The units make the whole. If the units are inefficient or short it jeopardises the whole. You have not the unit for what you admit is the weak point. You called in the aid of one of the experts a most excellent officer, whom everybody respects. I do not believe he ever gave permission for that extraordinarily stupid memorandum to be published. It was issued to the House as a board memorandum. It is always a mistake for any officer in either service to make a personal attack on his brother officers. It does no good; it is not fair, and it is not the point. The front bench is responsible, whichever Government is in power. What does the Admiralty memorandum say?

The really serious danger that this country has to guard against in war is not invasion, but the interruption of our trade and the destruction of our merchant shipping.

That is absolutely true; but you have done nothing whatever to guard against this really serious danger. The memorandum further states that if the fleet is placed "in a certain position" round this island it will be "almost necessarily sufficient" and "to a great extent" to protect the trade routes. Do we want to have it "almost necessarily sufficient to a great extent?" The door must be either open or shut. The trade routes are either protected or not protected. You can not protect them with big battleships, and you have not got the cruisers. The Admiralty sees the real danger, but does nothing whatever to meet it. If the House of Commons ratifies this Declaration it ought at once to lay down 100 small cruisers to protect the trade routes. At once! As I said before, if our navy was sufficient for this weak point which the Admiralty see and have done nothing

whatever to meet, you do not suppose there would be any trouble about the ratification at all? It is because there is a doubt; it is because you know perfectly well you are giving up our maritime rights. Why? For a very laudable plan.

You believe in peace and good will among the nations, and you want it. So do we. But your method of getting that peace and good will will never answer. It has never answered in the history of the world. You can not get it without respect. You are pulling out your teeth and claws, and you think other nations are going to do the same. They will say: "What a brilliant nation is England; they are so gone about peace and good will that they are going to put themselves in the position that if they are attacked in their weak places—which is their trade routes—they can not defend themselves. Therefore they say, "Let us all disarm." That is not the way to disarm. Be courteous and be civil to other nations; but be strong and firm. An honourable member opposite cheers that sentence. I am sure I have never said anything uncivil of other nations. I respect the Germans. They are men. They know what they want, and they are going the right way to get it. We are like a lot of—something. It is as a paper said the other day: We are putting hobble skirts on in the race. We are not by this means going to get peace and good will. We will not get these without respect. Let us have a fleet big enough. Let us see that we are organised in all particulars. Let us have a proper war staff, and let us put these matters right without insulting other nations as we did when the dreadnaughts were begun. Let us attend to our own business. Let us be properly defended and strong, and then you may talk about peace and good will. But you are never going to get it the way you are setting to work. You are giving up our maritime rights and our maritime powers under this Declaration. I most firmly believe that by doing so you will only earn contempt, and not respect, from the nations of the world.

Mr. J. M. ROBERTSON.¹ It is extremely difficult to find in the interesting speech of the noble lord who has just sat down anything that has any bearing upon the subject. The noble lord himself, with a candour which disarms me in my criticism, said he was not used to argument. I think that very fairly covers the main part of his speech. He indulged in a great deal of prophecy, which he seems to think is one way of proving that he is an expert as regards the question before us, that of the naval prize bill, or the Declaration of London. Four-fifths of his speech have no relevance that I could discover. The main part of it, surely, was a plea for a certain naval policy, for a certain adjustment of the navy. On that he is entitled to speak as an expert, but all that has nothing to do with the Declara-

¹ Liberal.

tion of London, and as to whether that Declaration should or should not be ratified. He did make some assertions which, had they been true, would have been to the point, but nine-tenths of his speech had nothing to do with the point at issue. He actually quoted from a convention which had nothing to do with the matter before the House, quoting a clause which he alleged pledged us to give up our sick and wounded. But the very words he read were opposed to what he asserted.

Mr. LESLIE SCOTT.¹ May I correct the honourable gentleman? The clause says: "The master of any British ship having on board any sick, wounded, or shipwrecked men, being combatants, who have been rescued," and he does not say whether or not they were to be given up to the ships of the enemy.

Mr. J. M. ROBERTSON. "The master of any British ship having on board any sick, wounded, or shipwrecked men, being combatants who have been rescued during or after a naval engagement in which they have taken part, shall, on demand being made in person by or on behalf of a commissioned officer actually in command of a warship of any of the belligerent States, deliver to him all such men." It is clear that that does not carry, in the least, the meaning that the noble lord gives to it. The noble lord poses as a practical person. He is dealing here with one of those practical questions that would come before him as a practical man, and he gives us the meaning absolutely upside down. He can hardly be surprised if in regard to the main issue before this House we are naturally a little diffident, a little slow, in giving our assent to his judgment, even on a practical question. While admitting that it is not proper in this House to cite the names and opinions of naval experts, nevertheless a large part of his speech dealt with them. There is plenty of evidence that the Government have taken ample evidence from experts of several kinds in this matter. All the real experts have been consulted. As regards what I may term the general opinion of the navy, whether it be that of admirals on half-pay or officers in service, perhaps the noble lord would be surprised if some of us suggest that it does not very much matter what they think on such an issue as this. It will be perhaps in the memory of the House that in the last century when the old navigation laws were abolished that the navy was in the main against their abolition. Whatever the kind of opinion that is being worked up against this Declaration, the opinion of that time was against the abolition of the old navigation laws. We had hundreds of those kinds of predictions that the noble lord is always giving to us here

¹ Conservative. For several years Mr. Scott had taken an active interest in the movement for the international unification of maritime law and was an honorary secretary of the International Maritime Committee. In 1909-10, he was a delegate to represent His Majesty's Government at the International Conference at Brussels.

against the Government. We were told that if the navigation laws were abolished there would be an end to the mercantile and fighting marine of Great Britain. We would, it was said, disappear from the list of nations. Well, both the mercantile marine of Great Britain and her other shipping have grown stronger and stronger since the abolition. We see the same sort of unreasoning sentiment worked up against the Declaration of London.

The noble lord did bring a practical question before us, namely, the transformation of merchantmen into fighting ships. But he did not in the least show that the Declaration of London was put in a worse position than before. A patent contradiction underlies nearly the whole of the opposition to the Declaration of London. There are two absolutely contradictory assumptions made. We were repeatedly told by honorable members opposite that in the event of war the food supplies of this country would be in absolute danger. That was before the Declaration of London was talked about. There is nothing I have heard oftener from the other side than if we were ever engaged in a naval war, what would become of our food supplies? Yet the moment that the Declaration of London comes up honorable members opposite discover that before-time we were almost absolutely safe in regard to our food supplies.

LORD C. BERESFORD. It is quite true what the honorable member says. We always pointed out this case. The Admiralty themselves have pointed out the seriousness of the case—it is not in the Declaration, but before this convention, and before The Hague Conference, there was no idea of arming these merchant ships on the high seas.

MR. J. M. ROBERTSON. That is neither here nor there. If I may quote the noble lord himself, it is no use saying "what ought to be if it cannot be done." You know very well we were in a naval war before, and there was nothing hindered the enemy from arming his merchant ships. You are giving him no new power by the Declaration of London. He had that power before and would have exercised it. The noble lord always assumed so. Many members of the opposition, with regard to the Declaration, argued before that our food supply in time of war was in the greatest danger. Now they have discovered, in virtue of some mysterious agreement among jurists, that food coming in neutral bottoms was always safe from the enemy. They have discovered it for the purpose of this debate. No doubt in regard to that they have on their side the honorable gentleman the member for North-West Durham (Mr. Artherley-Jones), who is a great authority in these matters, and some others. But if I may venture to say so in regard to my honorable and learned friend, who is really an expert on this topic, he has fallen into a fallacy in assuming that the merely verbal, or as it were, a literal agreement among a number of jurists as to what good feeling dictated

in regard to war usages was anything in the nature of a security. Honorable members on the opposite side have told us on this side that we were sentimentalists in all these matters; that we were far too ready to believe in the good will and human kindness of opponents. They claimed that there was no sentiment among men good or bad. They were all hard-headed business men. They were prepared to deal with human nature as they knew it. They would not rely upon the mere humanity of enemies. It appears that they have done so, or have professed to have been relying in a most extraordinary way on the consensus of civilised States that inasmuch as neutral ships ought to be respected in regard to food supplies and not to be made contraband then they would not be made contraband.

I think the nature of that fallacy can be understood if you consider the development of naval questions within the past 100 years. The right honourable gentleman the member for Dover challenges us to point out any case within 100 years in which certain things have been done in which I think neutral ships have not been respected or in which food supplies have been treated as contraband. The whole question is, what change has come over the relations of European powers in the last 100 years?

Mr. WYNDHAM. Particularly the destruction of neutral ships?

Mr. J. M. ROBERTSON. An honourable member on his own side of the House last night actually told us what was done by the Germans in 1872, that they sunk six British ships in the Seine, and that Prince Bismarck said that the measure, very exceptional in its nature, did not overstep the bounds of international warlike usage. He admitted there ought to be indemnity paid.

Mr. WYNDHAM. That is a different point. I was dealing with the destruction of neutral ships on the high seas. I said, not speaking on my own authority, but that of Dr. Baty, that there was no case—it has been alleged that we did sink four American ships during the Napoleonic war, but it is contended that they were hostile vessels—till we come to the year 1904-5.

Mr. J. M. ROBERTSON. That is precisely where the thing becomes important. If we take what we did in the eighteenth century we see nowadays that we took a very unscrupulous line indeed. I believe our Governments have always admitted that the line they took could not be maintained. But within the last 10 or 20 years a profound difference has arisen in relation of the nations in precisely these matters. My honourable and learned friend the member for North-West Durham last night claimed that all the authorities for 200 years agreed that food supplies ought never to be made contraband, but only conditional contraband. One of the authorities to whom I think he referred realised long ago that if it were a question of destroying your enemy by stopping his food supply a new con-

sideration would arise. That is precisely the kind of consideration that has arisen to-day. Why were the powers of 50, 60, and 100 years ago willing to give up the question of food as contraband, and let it go in unchecked as a rule? For this very reason, that it seemed a purely vexatious act to interfere with the food supply for non-belligerents. It was not a thing worth bothering over. Nobody supposed in those days that a whole country could be starved out. But honourable members opposite have told us for the last 10 years that a whole country could be starved out. If there is anything in what honourable members opposite tell us, and there is any possibility of an enemy that we might be fighting, taking up that position, if a whole nation is going to be starved out, it is as well that we should treat food supplies as contraband. The noble lord was very candid as to what he would do in time of war. There is nothing, apparently, he would not sink. If he were a German admiral and he was at war with us, I understood him, that if he could do so he would stop our collective food supplies if he could.

LORD C. BERESFORD. Certainly.

MR. ROBERTSON. Very well, then, the noble lord has admitted to me—I think he does not see the force of his own admission—that without any Declaration at all we should be in that position. I hope the noble lord does not think I am playing the sea lawyer with him and trying to entrap him. The argument I am putting is the argument I set out to make, namely, that there has been a complete reversal of the position amongst honourable gentlemen opposite with a former position assumed by them, that if we went to war with Germany Germany would make it her business to stop our food supplies. For the purpose of fighting this Declaration they say “No, you are perfectly safe, your food supplies would come in as usual.” They make a discovery which they never made before, and it is they who have turned sentimentalists for the purposes of this debate. In view of the modern economic development, not only of ourselves, but of other countries also, they depend upon imported food. That is the state of things that exists. It is quite true that we ourselves and foreign powers were disposed to say food supplies for individuals should pass; the practice was not to interfere with it. They argued that it would be doing nothing to stop a war, and that it ought not to be interfered with. To-day no foreign power would argue that if we were at war with a foreign naval power it would never seek to stop our food supply, but we had no such security, as we alleged, and the argument by honourable members opposite about putting ourselves in a worse position under the Declaration than we were in before is not only false, but is grossly inconsistent with their own position.

That is the answer to the whole case put forward by my honourable and learned friend the member for Durham. He seems to think that

because in the past jurists have taken that humane view about food supplies not being contraband, no modern power would fly in the face of the jurist. Last night my honourable and learned friend undertook to answer the Under-Secretary of State for Foreign Affairs, and to convict him of inaccuracy; but the whole of my honorable and learned friend's speech was a condemnation of other facts, and not of those put forward by the Under-Secretary. My honourable and learned friend seemed to treat as trivial the fact that in 1885 France declared that she would make food contraband of war, and that in 1904 Russia declared she would make food contraband. My honourable and learned friend said the consensus of the jurists is clear. That is true, and he went on to say you may have extravagant cases. But surely we are not to consider all precedent except the latest and most important precedent. The very precedents that are of importance, and especially the precedent of the Russo-Japanese War. The right honourable gentleman, the member for Dover, talked as if we had been having a continuous series of naval wars. What naval war was there between the Russo-Japanese War and our own war with France, except the American Civil War?

Mr. WYNDHAM. There have been many wars and naval operations, and I do not think the honorable gentleman is entitled to make much of 1885. He took the case of 1904-5, which shocked the civilised world; we protested against it but we have now adopted it.

Mr. ROBERTSON. The declaration of Russia shows what a civilised power is prepared to do. All the right honorable gentleman's declaration about shocking the civilised world is resort to sentimentalism. What does it matter how shocked the civilised world is? If a civilised power goes on doing it in view of the whole development of modern naval tactics and modern naval sentiment and the kind of sentiment the noble lord avowed this afternoon, we might expect to see an enemy take a course that would be shocking. The noble lord opposite talked about never being insolent to a foreign power, but he went on to say if we were as strong as he wished us to be, he would not care for any Declaration as we could defy the whole world, and need not heed anybody's claim. We could defy the universe; the noble lord does not want to say that in so many words, but that is the effect of his speech, and that in the language of the leader of the opposition is what I should call a retrograde step. Under the Declaration of London, there is power to come to an agreement on matters in which there was no agreement before, and that is a forward step. The declaration of the noble lord about more ships and hundred million loans, and the rest of it, are retrograde declarations which stand in the way of agreement.

As regards the practical question before the House, there is one point in the speech of my honorable and learned friend the member

for Durham, which calls for some examination. He insisted that the provision as to "base" in the Declaration is a provision that would be disregarded by any enemy's captains. That point is arguable, because even among the jurists there has been vacillation as to that very question of destination. There is Lord Stowell, who has been cited as a great authority, and he seems to put forward two contrary propositions. He first laid it down that the destination of food supplies is the test, and in a later decision he said it practically does not matter what is the destination, because the supplies, if going to an ordinary port, could be transferred by land for the purposes of military operation. So that you have all that vacillation among jurists upon this very question of destination. You may argue, as my honorable and learned friend did, that difficulty may arise as to the destination or base, but I turn to my honorable friend's own work, *Commerce in War*, to which I should like to give special praise for the reason that it cites for us the actual points of many legal judgments. In my honorable and learned friend's own book issued last year (page 48), quoting in connection with the Declaration of Russia, 1894, he says:

The supreme tribunal at St. Petersburg informs us, what we should not otherwise have suspected, that "*ennemi*" means the enemy "Government, contractors, army, navy, fortresses, or naval harbours, and not for private individuals." So interpreted the code supplies rather a good rule for the ascertainment of the contraband character of *prima facie* innocent goods.

Observe the statement "rather a good rule." If that is a good rule for the ascertainment of the contraband character of the *prima facie* innocent goods, how can my honorable and learned friend say that the definition in the Declaration as to destination is not fully complete? Take his own definition. By the definition in his book it was a good working rule. We are not contending that that definition would prevent the destruction or capture of food supplies in neutral bottoms. The whole point at stake here is not whether in naval war you are going to have good fortune or bad fortune, but it is whether the Declaration would put us at the slightest disadvantage. The noble lord opposite did not show a single point where it would put us at a disadvantage. He declared that we were going to give up our maritime rights. What he meant was, we were going to give up maritime claims not recognised. International law, if it is to be of any value in time of war, exists only in so far as it is embodied in treaties. I admit, of course, that indemnity and compensation may be given afterwards, but that subsisted before, but so far as international sentiment as to what ought to be done is not embodied in treaties it has no value in time of war. The great value of the Declaration of London is that it does embody in treaty form certain rights you had not got before. You had no maritime rights; you had

certain claims. We are told that Lord Lansdowne in 1904 and Lord Granville earlier claimed certain things, but they were not given.

Mr. WYNDHAM. They were admitted.

Mr. ROBERTSON. No, they were not. The right honorable and learned gentleman (Sir R. Finlay) told us that during the Russo-Japanese War a number of British ships were made the victims of Russian policy, and he used the extraordinary language, "We did not think it worth while to protest." [Honorable members: "No, not worth while to go to war."] That was not the language he used, because if these were his words there would be nothing in them. He could not protest, or war would follow.

Mr. BONAR LAW. As a matter of fact, Lord Lansdowne not only protested, but my right honorable friend the leader of the opposition said then on his responsibility as Prime Minister that he had received assurances from the Russian Government that it would not occur again.

Mr. ROBERTSON. But it did occur again. It occurred in a number of cases. I am not making any point against the right honourable gentleman; I am only showing that that admission amounted to this, that, short of a declaration of war, you had no remedy. The whole point is that under the Declaration of London you have absolute security against these things, which you had not before. The history of the last 25 or 30 years has shown that the mere sentiment of jurists and of international lawyers is of the very slightest value or security in these matters. Take one instance. In 1883 there was published a French translation of the German treaties on international law, with annotations by German jurists. In that it was expressly stated that neither bullion nor food was contraband of war; but in 1885, as Hall says in his book, "France revived the old claim in its most extreme form." There is no use telling us the action of France shocked the civilized world. France did it. The question is, what would happen in war? If France did it in 1885, and Russia did it in 1904, what right have honourable members opposite to proceed upon the sentimental declaration of jurists that food ought not to be contraband of war? No nation ought to rely upon sentimentalism for securities like that. The Declaration of London supplies, instead of that, a certain amount of definition, and crystallises it in treaty law. There is not a single point on which that treaty places us in a worse position than we were in before, and the whole case of the noble lord opposite must, therefore, collapse. Something has been said on the question whether the opposition to this Declaration does not proceed largely from a general distrust or dislike of agreements with foreign powers. The right honourable gentleman, the member for Edinburgh and St. Andrews Universities (Sir R. Finlay) indignantly repudiated that statement, said he regarded this as a non-party de-

bate, and that he regarded the assertion made by the Under-Secretary for Foreign Affairs as an attack upon the opposition. It was no such thing. The Under-Secretary for Foreign Affairs was at the time dealing with the general opposition to the Declaration, and not the Conservative opposition, and he actually cited one of the leading opponents of the Declaration (Mr. Bowles). What was the attitude of the right honourable gentleman opposite? He said, "Your only proof for that is the quotation of the name of a man who is a supporter of the Government." That was a proof that the Under-Secretary was not making a partisan statement. Mr. Bowles is an important representative of the opposition to this Declaration; in fact, in my opinion he is one of the ablest of them, and has done much to form opinion against it.

I know that a great many of the opponents of this Declaration have a general distrust and dislike of any agreements with foreign powers. This very question came up in connection with the Taft proposal which the Foreign Secretary so admirably endorsed. There was a dislike even to a friendly agreement of that kind. I do not want to press such a charge against the opposition or even against the opposition to this Declaration. It is an objection rather of sentiment than of reasoned action. This kind of sentiment has been very potent in the case of the opposition to the Declaration of London. It is the same as arose over the old question of the abolition of the navigation laws, and the folly of it has been abundantly demonstrated since by the history of the countries affected. When the noble lord opposite devotes his speech mainly to the question of how peace can best be maintained and attained he is no more of an expert on that matter than I am. The noble lord's own proposals show that he does not understand the conditions under which foreign powers have to be negotiated with when he puts forward his doctrine of the £100,000,000 loan.

LORD C. BERESFORD. I am sure the honorable and learned member does not wish to misrepresent me. I have never had anything to do with a £100,000,000 loan. I suggested a shipbuilding vote of £60,000,000, and the Government have already actually spent £35,000,000 upon the ships I asked for. The £100,000,000 loan has nothing to do with me whatever.

MR. ROBERTSON. The noble lord has repeatedly asked for a navy about twice as strong as it is. Of course, if I am wrong in my statement about the £100,000,000 loan I withdraw. At any rate, the noble lord demands an enormous increase in our navy sufficiently large to make other powers desire to keep peace with us.

LORD C. BERESFORD. Hear, hear.

MR. ROBERTSON. On that point the noble lord is no more of an expert than I am. The argument he has used that by making your navy

sufficiently big you will so frighten or cow foreign powers that they will no longer compete with us shows that the noble lord is no expert in human nature, and that is the only kind of expert that is of any importance in this debate. Whatever be the opinions of naval experts on this question we have to settle it on our own judgment. The noble lord seems to think that by predicting things will not go right on our line, and asserting that they will only go right on his line, he has met the case. That argument does not weigh with us at all. It is not on the quarter deck that you learn the way in which free men think and in which the minds of free nations work. I say with just as much confidence that the Declaration of London is a step in advance, and at no point is it retrograde. It is true that it does not secure much. The noble lord opposite argues that because we did not get all we want the Declaration is a failure, and that is the position taken up by the right honorable gentleman the member for Dover. Can the right honorable gentleman opposite tell me of any treaty in which any country ever got all that it wanted? It is true we have not got all we wanted in regard to making merchantmen transformable to warships only in port. I never expected we should obtain that concession. We have a good many ports, and it was a simple matter for us to do this and difficult for other people, and, therefore, it was too much for us to expect. The real question is, has the Declaration of London given us something that we had not before? Has it won a few more steps of firm ground for the nation out of the chaos of conflict of claims that existed before? It has done so, and that is its justification.

Mr. BAIRD.¹ The honorable and learned member who has just sat down has stated that although the Declaration of London does not give us all we wanted it is a step in advance. May I remind the House that there has been a former Declaration of London, but it does not occupy a fortunate place amongst declarations. The previous declaration was signed in 1871, and it was to this effect:

The plenipotentiaries of all the great powers in conference, recognise that it is an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty, nor modify the stipulations contained in it unless with the consent of the consenting powers by means of an amicable arrangement.

That Declaration of London was not worth the paper it was written on, because the powers that signed it seven years later signed the treaty of Berlin, and that was torn up only a couple of years ago. For that reason honorable members opposite are apt to exaggerate the misfortune which might occur supposing this Declaration were not ratified. I quite agree that it would be very uncomfortable, after

¹ Conservative.

having invited the representatives of the various powers to London, and after having agreed that on certain aspects of international law which were formerly in disagreement, if eventually Great Britain says she can not see her way to ratify that treaty. What is the object of ratification if it is not to afford the people an opportunity for saying whether or not they really want the treaty negotiated in their name? When you put on one side the inconvenience of refusing to ratify a treaty, and on the other side the inconvenience of ratifying a treaty inimical to our interests, I do not think there is room for a moment's hesitation. We have not to consider whether it is a step in advance or whether it is a retrograde step, but whether the principles embodied suit us as a nation and suit the Empire. We have to consider whether we shall be better off and stronger after this Declaration has been ratified than we were before.

I think we are too much concerned about looking after the business of other people. We have interests of our own to look after, and as regards this particular treaty, dealing as it does with the rights of belligerents and neutrals in maritime war, surely we are the people who ought to be first of all considered, because in that connection what is for us a matter of vital importance is for them a matter quite secondary as compared with ourselves. What we have to consider is how we stand under this treaty. I have heard the speech of the honourable member for North St. Pancras (Mr. Dickinson), and he was under the impression that this treaty leaves things either very much as they were before or else we gain. I do not think that in all the speeches in which honourable members have endeavoured to advance that theory they have succeeded in making it good. It is perfectly easy to make an assertion of that kind, and I should be the very first to support the Government in an instrument which had been negotiated with foreign powers if I did not think a great deal of weight must be given to the objections which have been raised against this instrument by those who are best qualified to judge. I think those best qualified to judge in this matter are the shipowners, the naval men, the insurance people, and those whose daily life brings them into daily contact with the problems dealt with by this Declaration.

Take the point of contraband. There is not the slightest doubt that, according to the treaty, we have given up our original view with regard to contraband and adopted the German view. Honourable members who support this Declaration say that in any case ships could be declared contraband of war by Germany or Russia, or any other power with which we happened to be at war. Certainly it could, but if this Declaration does not come into force you leave neutral powers free to make an effective protest, which they can not do if this Declaration is signed, because they have to abide by the

Declaration, and any protest on the part of neutral shipowners as regards the detention of their ships by a belligerent is referred by the Foreign Office of the country in question to the international court. It does not refer the matter directly to the international courts; it only comes there after the case has been decided in the international prize court, and consequently there will be an interminable delay and a great deal of bother, and it is open to doubt whether anyone will avail themselves of this court of appeal at all. Meanwhile the damage is done. Let us consider the practice in these matters so far as we are able to examine them. Take the case which has already been alluded to where rice and other things were declared contraband of war by Russia. When that occurred our ambassador was instructed to make a strong representation to the Russian Government. I hope the House will pardon me for reading a quotation upon this subject. In the correspondence respecting contraband of war in connection with the hostilities between Russia and Japan there occurs the following passage in a communication from Lord Lansdowne to Sir C. Hardinge:

His Majesty's Government do not contest that, in particular circumstances, provisions may acquire a contraband character, as for instance, if they should be consigned direct to the army or fleet of a belligerent, or to a port where such fleet may be lying, and if facts should exist raising the presumption that they are about to be employed in victualling the fleet of the enemy. In such cases it is not denied that the other belligerent would be entitled to seize the provisions as contraband of war, on the ground that they would afford material assistance towards the carrying on of war-like operations.

What was our contention, and what has it always been with regard to food? Our contention was not in accordance with the one put forward by Russia. We protested and our protest was successful. It was so successful that whereas food had been made contraband by Russia it was modified, and in the upshot this is what Russia did:

In consequence of doubts which have arisen as to the interpretation of article 6, section 10, of the regulations respecting contraband of war, it has been resolved by the Imperial Government that the articles capable of serving for a war-like object, in regard to which no decision has been taken, including rice and foodstuffs, shall be considered as contraband of war if they are destined for—

- The Government of the belligerent power;
- For its administration;
- For its army;
- For its navy;
- For its fortresses;
- For its naval ports; or
- For its purveyors.

That is what we obtained by negotiations, and I for one am not prepared to say we are able to obtain less by negotiation now than in the past. If that is the contention of the Government, I can under-

stand their signing any agreement or Declaration. What is the difference between that which was obtained by negotiation with Russia and the Declaration, to the ratification of which we are now asked to assent? Article 33 of the Declaration refers to contraband, and article 34 says:

The destination referred to in article 33 is presumed to exist if the goods are consigned to enemy authorities * * * or to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy.

It all turns on the words, "Other place serving as a base." How are we to define this question of a base? I have seen a letter from the Foreign Office to the Admiralty to this effect:

Sir Edward Grey, in his speech on April 7th, 1909, expressly said it was exceedingly difficult to give a closer definition of the words "base of supply," and reliance must be based on the courts giving a reasonable interpretation in each particular case as it arises.

I do not think that is good enough. Can anybody maintain that is a sufficient and a complete safeguard for a country like this? Can anybody say to-day whether a certain port will be a base of supply or not, because, in spite of all the efforts of honourable members opposite and other people to separate the armed forces of the nation from the civilian population, we are bound in time of war to rise as one man, and everybody will more or less be a soldier. I see the right honourable gentleman (Mr. McKinnon Wood) laughs. We should have a very poor chance of carrying on a war successfully unless the nation did come forward like that, and I should be very sorry to think that we are the only nation which would not rise to such a necessity. If the right honourable gentleman is prepared to laugh at an idea of that sort, what is he going to put in its place? Is he going to safeguard the country by treaties and declarations which are not worth the paper on which they are written? That is a dangerous attitude to take up, and, if that is what the laughter of the right honourable gentleman means, I am glad he laughed and made it clear what is really at the back of his mind, what are the sentiments of the party he represents, and what he considers to be a satisfactory safeguard for this nation if we should unfortunately be at war. The view I have ventured to advance is not merely held in this country. The other day I came across an extract from a newspaper which is published in Vienna, and I think it has a considerable bearing on the subject. The *Borsen und Handelsbericht*, of 5th February last, talking of prize courts, says that the decisions of the British and French prize courts have in almost every case been exceedingly satisfactory because those courts were in charge of well recognised and thoroughly trusted jurists. It then goes on to say:

Some anxiety must be aroused in England when it is proposed to submit the action of English fleets and warships to the jurisdiction of a tribunal in which Colombia and Norway have just as much voice as England.

Honourable members opposite demur at that view, but, if they will read the Declaration, they will see deputies are to take the places of judges of certain powers which may not be in a position to send their own representatives, and those deputies will have the same voice, and possibly a casting voice, in cases coming before the courts. You can not therefore say you will attach so much value to the judgment of certain judges and less value to the judgment of others. If you do, you make a farce of the whole thing. People who are dissatisfied with the composition of the court are justified in not wishing to submit the judgments of the highest judicial authorities to the revision of a court in which the majority may consist of foreigners who are not entitled to claim they have had the same experience in these matters. This paper goes on to describe the provisions with regard to a base. It says:

Hitherto provisions which were being taken to a country were not considered as contraband unless it was beyond doubt they were destined for the army, although in practice opposite decisions have been given.

Everybody has thought that the ordinary recognised practice, and, whenever States have endeavored to introduced a different reading, there has been a protest, and that protest has nearly always been successful:

According to the Declaration of London, they are not to be contraband unless carried direct to the enemy's army, or to a point which might serve as a base for such army.

It all turns on the word "base."

It is so vague a condition that it can only be looked at with suspicion. Let us imagine for example, that the Austrian Army is fighting between Isonzo and Tagliamento against Italy. Is wheat that comes from India or Egypt to Fiume contraband? It can be so declared if found desirable, for it can be brought by train from Fiume to Trieste or Gorz, and there used for the army. If the new text of the Declaration of London is upheld, all wheat that is being brought to England in neutral ships will be contraband, for it can always be carried from Liverpool, Bristol, or Southampton to the English Army by rail. Thus the difficulty of provisioning England during war would be immeasurably increased. All the victories of its fleet would not protect it from starvation or famine prices.

I think that is rather a striking quotation. I have translated it for the convenience of the House. The paper is here if the right honourable gentleman would like to look at it. It represents the opinion expressed by scores of people in this country, people who are not keen politicians and who are not engaged, as we, unfortunately are, in fighting, because the Government insist on it, on party grounds. The matter ought to be taken out of the party arena altogether. It is impossible to imagine any more potent confession of weakness than the fact that the Government have not dared to take off their whips, but have insisted on carrying this measure through by

the votes of honorable members who have no obligation whatever to come here, and some of whom openly avow their votes are given, not because of the merits or demerits of the measure, but because they will support honorable members opposite so long as there is any chance of them getting home rule. It is rather striking and interesting that we should have inaugurated single-chamber government on a matter of such vital importance as this question of the Declaration of London. I should like to refer to the despatch which the Secretary of State for Foreign Affairs addressed to His Majesty's representatives abroad for the purpose of inviting foreign representatives to come to this conference in London. Here is what he says:

It would be difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention, unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal would be governed.¹

Then we had the Prime Minister's answer to a question last week. He was asked whether he was aware the Under-Secretary of State for Foreign Affairs had stated that the Declaration would not be ratified unless passed by Parliament, and whether it was not a fact Parliament meant both Houses of Parliament. The Prime Minister said:

No, it would make no difference to the action of His Majesty's Government whether the House of Lords approved or disapproved.

Here we are discussing, as a single-chamber government, a measure which is to stand, if ratified, for 12 years, long after, I hope, the power of the present Government has ceased. We are doing this knowing that the votes which will be given in favour of this Declaration will not be based on the merits of the Declaration, because the vast majority of members have not taken the trouble to come and listen to the discussion, but will be given because it is looked upon as a party question and as a move in the party game. Having regard to the vital change which this Declaration introduces, having regard to the fact that we had to yield on three substantial points and that the conference insisted on adopting, not our policy, but the policy of those who possibly would be our rivals, and having regard to the fact that the alterations in international law to be introduced will have far more effect upon us than they can possibly have on those opposed to us, it is little short of a scandal we should be discussing this great question under these conditions. Some day possibly the country will wake up to the fact. Meanwhile, all one can do is to register a protest against this method of transacting the nation's

¹ Sir Edward Grey to His Majesty's Representatives at Berlin, Madrid, Paris, Rome, St. Petersburg, Tokio, Vienna, and Washington, February 27, 1908. *British Parliamentary Papers*, Miscellaneous, No. 4, 1908, [Cd. 4554], p. 1.

affairs and at the same time point out the blemishes and drawbacks in the Declaration. If the Declaration is such a good thing as honourable members opposite make out, why have they not succeeded in persuading either the commercial community or the shipping community of its merits? They are not as a rule so bashful that they are averse to stumping the country and making their views heard and known throughout the country. Why have they not succeeded on this occasion? Nothing they have said has succeeded in removing the opposition to this Declaration.

I can not help thinking nothing could be more dangerous than the view which was expressed in this connection by the honourable member for North St. Pancras (Mr. Dickinson). He referred to the dreadful state of affairs which would arise as regards our position among the nations if we failed to ratify the Declaration. That is, of course, an uncomfortable thing to contemplate, but it would not be anything like so uncomfortable as if we ratified an instrument which alters the accepted international law in a sense which not only we ourselves but foreign nations admit is unfavourable to Great Britain. I can not conceive anything less likely to inspire respect for this country than that we should have the weakness to ratify an instrument we do not like simply because it is made in London. I can not imagine anything much worse than that. There is another argument which the Under-Secretary of State for Foreign Affairs advanced. He said, very unfairly, that the opposition to this Declaration came in the main from people who were opposed to international understandings of any kind. Those may not be his words, but he will not deny that was the purport of what he said. He might just as well say that because a man refuses to marry a certain woman he proposes to remain a bachelor all his life.

I can not imagine anything more foolish than the attitude adopted by the Under-Secretary of State for Foreign Affairs. Does he mean that everything passed by our representatives must be ratified? Does he pretend that every country has always ratified everything its representative has signed? Is he not aware that America, with whom we are endeavouring to negotiate a treaty of arbitration,¹ refused by its Senate, to ratify a treaty of arbitration, and does he contend the British House of Commons has not as much right in the affairs of this country as the Americans have in the affairs of the United States? Is that the contention of the Under-Secretary? If so, it increases still further the farce we are now taking part in of discussing, on purely party lines, this measure of great national

¹ An arbitration treaty was negotiated between the United States and Great Britain during the summer of 1911 and went to the United States Senate, August 3, for ratification.

importance subject to the Government whips. The various points of this Declaration have been gone into so fully and so clearly by my right honourable friends that I will refrain from going over the ground again. But I should like to call attention to one aspect of the question from a diplomatic point of view, and I should like to refer to the fears expressed by the Under-Secretary as to the results which might arise from our failure to ratify this instrument on the ground that it has been made in London, and on the ground that we were the proposers of it. Those fears, I venture to suggest, are not well founded, and I think, too, that they are outweighed by the importance of only ratifying what is in our own interest. To take a step in advance or sideways or in our rear, and to justify it on the ground that, although it may not be quite so good for us, it is better for the world at large, is a procedure which I do not think this country is ready as yet to adopt, and I should like to remind the Under-Secretary that there is still a rule which obtains in international affairs, and which is not likely to become out-of-date in the lifetime of any of us here present: "*La raison du plus fort est toujours la meilleur.*"¹

MR. CHARLES ROBERTS.¹ The fact that the Government are going to give a third day to this debate shows their anxiety to meet the views of honourable members opposite who have come in such a large number to watch its course. [An honorable member: "Look at your own empty benches."] We are not so anxious as to this Declaration as honourable members opposite profess to be. I think the honourable member who has just spoken has been a little unfair to the Government, bearing in mind the fact that it could have ratified this Declaration without consulting the House of Commons at all.

MR. BAIRD. I quite agree, but may I, on the other hand, point out that the Declaration will be perfectly useless unless the naval prize bill is also carried, and it was consequently inevitable that this Declaration should be discussed.

MR. CHARLES ROBERTS. It makes a considerable difference whether the naval prize bill was discussed after the Declaration was ratified or before. If it had been ratified first and the naval prize bill then brought in, it would have been practically impossible for the House of Commons to express its free judgment on the question of this bill. I think the honourable gentleman should place that to the credit of the Government when he attacks them for putting on the party whips. Surely, on a matter of primary importance such as this, it would have been nothing else than a dereliction of duty on their part, and a failure in leadership if they had not thus shown their opinion that this was a matter of prime importance on which they

¹ Liberal.

were entitled to appeal to their followers for support. The honourable member taunted us practically with neglect of British interests in this matter, and implied that we who approved this Declaration regarded the matter purely from the point of view of sentimental internationalism. I do not think that is right. Those of us who support the Declaration believe it is for the interest of England as a whole as well as a great step forward in international progress. I may lay myself open to the honourable member's attack when I frankly confess I look on this bill as one who desires to abolish the right of capture altogether and who hopes to see in the future an international agreement which will secure that abolition. I know it would be out of order to discuss that question to-day, but I can not help thinking that a great deal of grist has been brought to the mill of that cause in these debates.

We have a document issued by 127 admirals, distinguished by the presence of nerves, and by the absence of logic. They explain in it that our food supplies are in imminent peril and, under their penetrating gaze, the British Navy disappears into 27 cruisers scattered over the high seas, and constituting the sole force available for the protection of our commerce. We are assured, too, that there is no safeguard against the dangers of national starvation. If this is the case I am bound impenitently to say the solution seems to lie in the hope of securing the immunity of private property from capture at sea. I understand that it is not in order to discuss that, because the Declaration and the naval prize bill presuppose the continued existence of that right. I shall, therefore, have only a word or two to say about it later on. I do not mean to go over the whole ground of the discussion; it has been traversed so fully, on both sides, that we now pretty well know the respective views; but I should like, if I may, to state how the matter appeals to my mind after its discussion by experts. The problem before us is to ratify or not to ratify. The leader of the opposition declared, in his speech in the city the other day, that one ground for refusing to ratify was that the Declaration was not clear, and did not cover the whole ground. I admit it does not cover the whole ground; but if you are to wait until an international agreement covers the whole ground of international conditions, you will wait forever. To my mind, it is no reason to refuse to ratify because it does not cover the whole ground. It does take a few definite steps in advance.

The right honourable gentleman the member for Edinburgh University (Sir R. Finlay) made another point. His argument was that it was unwise to ratify this Declaration because you could not go beyond it when you had ratified it. He said you were tied down to the clauses of the agreement, because you recognize that the Declaration embodies existing international law. I am bound to say that

I think he could have discovered if he had wished an answer to that, and certainly in the Renault memorandum the answer is absolutely before us. That report contains these passages:

The solutions have been extracted from the various views and practices which prevail and represent what may be called the *media sententia*. They are not always in absolute agreement with the views peculiar to each country, but they shock the essential ideas of none. * * * The work is one of compromise and mutual concessions. Is it on the whole a good one?

How anybody can argue when you have gone into an agreement which is so described that you are thereby estopped from going further and getting other agreements on points which are not agreed seems to me to be very extraordinary. Therefore my first ground for wishing ratification is that an international agreement breeds other agreements in regard to points that remain open. This Declaration was a work of compromise in which we did not always get our own way, but on the other hand I think to refuse to ratify it would be the greatest bar and obstacle to any further international progress that might be obtained, and from that point of view, while admitting that it does not go the whole way and cover the whole ground, yet I think we ought to rejoice in the fact that after all there is a little firm ground won from the morass of conflicting opinions and international divergencies. On that ground alone I think it is worth our while to secure definiteness and uniformity of action in a limited sphere, joined with the great advantage of a code established up to a certain point, and an international court. I think it is a great advantage to get that and it is an advantage to England as well as to the rest of the whole world.

My other point is this, I have listened to the case which has been put by the other side. I tried to listen with an open mind, and I think I represent the case fairly if I say that their objection to the Declaration is that under it, and in consequence of it, certain things will happen if we ratify it. In the first place there will be certain dangers. They say that cruisers will be converted on the high seas, and they will prey upon our commerce. Secondly, they say food will be declared conditional contraband, and in their view of the position the proof of destination has been somewhat dangerously widened. Thirdly, they say that neutral ships, in case we ourselves were at war, would be sunk in exceptional cases. That, I believe, is the real case which has been presented from the other side. It is said that all these dangers will be incurred if we ratify this Declaration. What will happen if we refuse the ratification? Every one of these dangers will be there. Cruisers will be converted into warships on the high seas. We shall protest; our protest will go for very little, and we shall not think it worth while to go to war. That is what will happen; and the other dangers will equally remain.

I do not say that the lawyers inside this House expect, if we went to war, that food would not be regarded as conditional contraband; but I think outside this House the man in the street thinks it an outrage that food should be regarded as contraband at all. How can we expect that food would be in any other category? All we have got to do is to look at our Prize Manual, published in 1866, and there you have food and liquors fit for the consumption of army and navy under the head of conditional contraband. The honourable member for Rugby said that protests in regard to these matters were of great value, and he instanced the case of our protest against Russia in 1904. He said that by reason of that protest Russia explained her definition of contraband, and it was understood that food was to be regarded as contraband if destined for the Government, or for contractors or for naval fortresses or the army and navy and not consigned to individuals. That is practically article 34 of this Declaration. That is to say, if we went to war we should even if we refused this ratification have exactly the same dangers which honourable members tell us we shall be exposed to if the ratification took place. Then we are told that neutral ships will be sunk in exceptional cases. Now there has been some controversy on that point. The honourable member for North-West Durham (Mr. Atherley-Jones) last night told us that the ships which were sunk at the end of the Napoleonic wars were not neutral ships, but enemy's ships, and, therefore, they did not count in the decision on the subject. I looked up the reference, and the language, which is perfectly clear, is that of Lord Stowell, who in giving judgment on the case said:

Where a ship is neutral, the act of destruction can not be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own State. To the neutral, it can only be justified under any such circumstances by a full restitution in value. These are rules so clear in principle and established in practice, that they require neither reasoning nor precedent to illustrate or support them.

Thus destruction could be justified if you pay compensation, and so we ended up the Napoleonic wars with the definite statement that neutral ships could be sunk on condition that they were paid compensation. That is our own great authority. Moreover, when honourable members tell us that the whole civilized world is struck with horror at the proposal to sink neutral ships there is the statement by Professor Holland:

There is no established rule of international law which absolutely forbids under any circumstances the sinking of a neutral prize. A consensus gentium to this effect will hardly be alleged by those who are aware that such sinking is permitted by the most recent prize regulations of France, Russia, Japan, and the United States.

It is quite true that we individually have accepted that view, but if we went to war it is perfectly plain that our views would not

prevail against the views of the powers who did not accept them. I am ready enough to make a concession to the other side. I think if we had to choose we should obviously have regarded it as more satisfactory if we had had our views accepted with regard to proof of destination, and it would have been more advantageous and more for the benefit of the civilised world. It would have been again a distinct advantage if we could have got our views accepted on the sinking of neutral vessels. We did not succeed. It is admitted we did get our views accepted on a very considerable number of other points. Those points are never referred to on the other side. They only deal with points where we had to make concessions in order to get agreement. I admit that, but at the same time it is a matter of mutual concession, and I can not imagine how any one could expect that necessarily we should get our own way in every single thing. We did not. I do not believe we are really exposed to serious danger, but what I feel is that though we did not get our views adopted on these two points, as the other side have triumphantly proved, yet if we refuse to ratify the Declaration it does not mean that foreign nations will thereupon accept our views. If they had proved that, I should say there might be a case for refusing that ratification, but it is perfectly obvious that that would not occur. Foreign nations would continue to hold their views in ignorance which we may regard as benighted or wrong-headed, but that would not alter the fact that the refusal to ratify merely means that they would maintain their views in a more extreme form than anything which is in the present Declaration. Therefore, when they tell us that these dangers will accrue under ratification of the Declaration of London I tell them it seems to me that these same dangers are there, if we refuse to ratify, in a more violent form, and at the same time we lose the very decided advantages which come to us by securing the right for neutrals of an appeal to the international court.

Mr. LESLIE SCOTT. I speak to-night merely as a lawyer who has had a good deal to do with those questions of international law. During the Japanese War I had to do professionally with most of the cases of capturing that occurred in the course of the conflict. I speak also because I had the honour to represent this country at international conferences in kindred matters and in shipping matters. I appreciate fully the difficulty which the delegates of this country had in coming to an agreement with foreign powers of a satisfactory character on the complicated questions involved in the Declaration of London. If I venture to offer an opinion upon the results which have been obtained by the delegates of this country at the London Conference, it is as a lawyer and on a comparison of the law as proposed by the Declaration of London with the law, as it would be or is without that declaration. Forming to the best

of my ability an opinion on that basis, I have, after long consideration and with considerable anxiety, formed the opinion as a lawyer that the differences created by the Declaration of London are on the balance substantially against the interests of this country when we compare our position under the declaration with what it is under the existing state of international law.

I can not help expressing great regret that the Government have thought fit for practical purposes to make this a party question. I recognize that the Government of the day may under certain circumstances have information at its disposal which is not available to the ordinary private members of this House, which compels them to say, "We have knowledge which you have not. We, therefore, say to the supporters of the Government you must support us, believing in us, accepting our opinion, and relying upon your trust in us." Circumstances may well arise in which that may be the position, but in this case I venture to think that no such position has arisen, and that the Government can not call in aid and support of the course adopted by them any such consideration. The factors upon which this question must depend are factors relating to three branches of technical knowledge, namely, the navy, our commerce, and international law. If the Government could say, "We have special knowledge and information at our disposal which is not open to the country at large and which is not open to the members of this House upon any one of these branches," I would concede the right of the Government to say, "Followers and supporters, believe us, and do not ask for reasons. Vote as we ask you to vote." Surely in this case there are no such considerations which affect the question. Why in this case should the Government say to its supporters, "We deprive you of the right to give effect to your individual opinions in this House by our party whip," when on the facts of the case every member of the Government side is as competent, so far as we know, and so far as one can judge from the documents put before the House and the country, to form an individual opinion, has as good a right to express that opinion, and, as strong a duty to his constituents to express that opinion by his vote, as in any case that can be conceived.

If they appeal to the experts on these three branches of knowledge or of interest that are affected by the convention, what is the answer? If they appeal to the navy, is there unanimous opinion in the navy in support of this convention? What is the view of my honorable and gallant friend who represents Portsmouth (Sir Charles Beresford)? Is he or is he not qualified to express to this House with some knowledge the view of the navy on this subject? We have 120 admirals signing a joint resolution, and they are all opposed to the Declaration of London. Take the commercial world. Is there una-

nimity in favour of the Declaration? The chambers of commerce of this country, who represent not so much the shipowners as the merchants who are interested in the oversea trade of the country, are almost unanimous in their opposition to the ratification of the Declaration. The honourable member for the Hexham Division (Mr. Holt) said to-day that one of the shipowners' associations was in favour of the Declaration. I agree with the honourable member that the association in question is an important one. But if you look at the bulk of the shipowning interest in the country, you will find that the great majority of the tonnage as expressed in resolutions by the various bodies is opposed to the ratification of this Declaration. Under those circumstances how can the Government justify their attitude in making this a party question and saying to their followers: "Support us, though you do not know why. Abandon your right of individual opinion and vote with us because we ask you to do so." I submit that this is not a case where the Government has any right to dictate to their supporters and ask them in this House to accept the direction of the Government instead of expressing their individual opinions. What is the other branch of technical knowledge affected by this Declaration? It is international law. What is the position of the leading international lawyers of the country? Are they agreed? What about the opinion of Professor Holland? He probably has spent more time than any other lawyer in this country on the question of international law. He is a member of the Institute of International Law.

His attitude, and his carefully considered attitude, is that on the whole he is opposed to the ratification of the Declaration of London in its present form. What do the lawyers in this House say? Is there a lawyer in this House, except the Attorney-General and the Solicitor-General, who is in favour of the ratification of this convention? Is there a lawyer in this House who has spoken in favour of it? Not one. The honorable member for North Durham (Mr. Atherley-Jones), an international lawyer of repute on the Government side, has spoken strongly against it. On this side of the House are there any lawyers conversant with these matters in favour of the declaration? I know of none. In those circumstances I submit that the Government have no justification for making a party question of it in this House and in the country, and I venture to think that the commercial classes of this country of both political creeds who have opposed ratification of the declaration will resent it as an injury that the Government should have made it a party question and issued a party whip in favour of it. I agree that primarily the question of the ratification depends on the comparison between the existing state of law and the state of law that would be brought into being if the Declaration be ratified. On that I agree with one

remark of my honorable friend the member for Hexham boroughs, that the primary question is, are you to regard this matter from the point of view of Great Britain as a belligerent? I agree with him that if you regard the matter from the point of view of Great Britain as a neutral it is possible to come to a different conclusion from that at which you will arrive if you regard Great Britain as a belligerent.

I think that very much depends on the solution of this question, on whether you regard it from the point of view of this Empire as a belligerent or this Empire as a neutral. On a review of the Declaration as a whole, it may well be that, regarded from the point of view of the interests of neutrals, the Declaration is advantageous, and marks some progress in favour of neutrals. But I venture to think also that, if on a fair review of the whole terms of the Declaration, you come to the conclusion that whatever good it may do to us as neutrals, it will do harm to us when we are belligerents, the dominating consideration must be, does it do good or do harm to us as belligerents and not as neutrals. In the one case we are concerned merely with money, whether rights of compensation or whether rights of damages. If the other case we are concerned with our existence. I imagine that the House will concede the proposition that though it may do good to us as neutrals, yet if, on the balance, it does harm to us as belligerents, it is not an agreement which should be ratified. Let us consider for a moment what it does for us as neutrals. But before doing so, perhaps I ought to advert to the promise by the Secretary of State for Foreign Affairs that the report sent to the conference by the drafting committee, usually known as M. Renault's report, is to be treated, upon ratification by this country, as a part of the international agreement embodied in this agreement. I venture to think, as the honourable and learned member for York said yesterday, quoting Professor Holland, that to add that report to the Declaration would be merely to make confusion worse confounded. I have read and considered carefully the report, and I venture to think that if it is to be interpreted as a document of convention between nations it will leave far more sources of doubt for solution by the international tribunal than are to be found in the Declaration itself.

If that is so, and if that report was not discussed clause by clause—and we know that it was not discussed clause by clause—why should it be treated as equivalent to an international convention? The dangers inherent in a position of that kind are obvious, and, if I may say so in all humility, with my experience of international conferences, and the use of such reports which are common in international conferences, it would be a lamentable result if that report were to be treated as equivalent to a document of convention or agree-

ment between the powers of the world. It is not drawn up for that purpose. Its language is not considered with that precision and that due deliberation which are necessary for the language of a convention of an international character, and if we have that document attached to the Declaration of London, as a part of it, in accordance with the promise of the Secretary of State for Foreign Affairs, the result will only be that we shall not know where we are. There are several points upon which that report, seriously as it appears, to me changes the language of the convention to the disadvantage of a country like Great Britain when at war. The First Lord of the Admiralty yesterday in his speech in this House, in answer to the right honourable gentleman the member for Edinburgh University, said that there was nothing in this convention which affected the rights of belligerents *inter se*. I venture at once to challenge that statement, and I challenge the learned Attorney-General, whom I see opposite, to dispute the proposition which I am going to advance, that if, under the arrangements of the convention establishing the international prize court of appeal a question is brought before that court which affects the rights of belligerents in regard to a claim by a neutral, that court will come to some decision or other. The decision will form a precedent which will guide the court for the future. That decision will operate as an interpretation of the Declaration of London, and for practical purposes it will be an additional clause in the Declaration of London.

SIR RUFUS ISAACS. Does the honourable and learned gentleman suggest that the Declaration of London deals with the rights of belligerents *inter se*?

Mr. LESLIE SCOTT. No, I do not, and I should have thought the Attorney-General would have known that I do not suggest anything of the sort. The Declaration of London deals with the rights of belligerents and neutrals as between themselves. It does not touch in itself the rights of belligerents *inter se*. But I do say this, and I am quite certain that the learned Attorney-General will not contradict the proposition, that the fact of the decision of the international court of appeal as between belligerents and neutrals pursuant to the convention, will affect in the result the rights of belligerents *inter se*. The First Lord of the Admiralty yesterday advanced this proposition, which, with all respect, I think totally untenable. He said:

There is nothing in the Declaration of London which affects the rights of belligerents *inter se*. It only affects the rights of belligerents themselves as against neutrals.

With those propositions I agree. The right honourable gentleman went on to say:

Consequently, every belligerent as against his enemy is not bound by any decision of the international prize courts. [Official Report, 28th June, 1911, col. 538.]

With all respect I challenge that conclusion from his premises. Let us take, for instance, the question of conversion of merchantmen into ships of war, which is not covered by this Declaration. But under the convention which attached to the schedule to the bill, the second reading of which we are discussing, it is provided as follows:

The validity of the capture of a merchant ship or its cargo is decided before prize courts, in accordance with the present convention when neutral or enemy property is involved.

Article 7 says:

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself, or the subject or citizen of which is, a party to the proceedings, the court is governed by the provisions of the said treaty. In the absence of such provisions, the court shall apply the rules of international law. If no generally recognised rule exists, the court shall give judgment in accordance with the general principles of justice and equity.

The effect of these provisions in the convention is that if there is a matter which is not covered in express terms by the convention then the international prize court of appeal has to decide the question by the rules of justice and equity. Let us imagine a claim brought forward by a neutral against a belligerent for damages for compensation for a neutral vessel belonging to the neutral power, sunk or captured, it does not matter which, by a merchant vessel of the belligerent power, converted into a ship of war in the high seas. Take that as an instance. It comes before the courts of the belligerent country and of appeal before the international court. The international court is bound under this Declaration by no convention or rule as to what is to be the law in such circumstances. It, therefore, has to consider and apply what are considered to be the ordinary rules of justice and equity. Under these circumstances it is perfectly conceivable that the international court of appeal may take one of two views. It may either say that the conversion of a merchant ship into a ship of war on the high seas is contrary to the usage of nations, or it may say that it is consistent with the usage of nations. Whichever view the court takes it gives a decision in accordance with that view. That decision forms a precedent, and, for practical purposes that decision is an additional article of the Declaration of London added for the future to that Declaration, and for practical purposes binding on the parties to the Declaration who have agreed to the institution of that international court of appeal. Under those circumstances I imagine another war occurring. Can it be said for a moment, when the next war does occur that the belligerents in that war are not

affected *inter se* by the judgment of the international court of appeal, deciding, for instance, that, under the circumstances, the conversion of a merchant ship on the high seas into a ship of war is legitimate and that the neutral, captured by that ship, has no claim to compensation.

It seems to me to follow necessarily, and I am perfectly certain that the learned Attorney-General will not challenge that proposition. A decision in that way given between the belligerent and neutral, once it is given, will affect the rights of belligerents *inter se* thereafter and forever. It will affect them in this way. Let us imagine this country to be at war. Take a concrete case, and let us see what the application of it is. Let us suppose, for example, that we are at war with France. France has some merchantmen ready equipped in time of peace for conversion into unarmoured cruisers. At the commencement of the war she sends these vessels out on the high seas, in the neighborhood of the trade routes, over which is brought the food supplies of this country. She converts these ships under sealed orders to be opened at certain places. One of these merchantmen converted into a ship of war captures a merchant vessel bringing a cargo of grain to this country. We are at war with France. The captain of the French merchant vessel, so converted into a cruiser, has orders to act in accordance with instructions, and to seize or capture vessels carrying cargoes of grain to any port in this country which is a base of supply. Can it be said for a moment that this will not be justified by the pre-existing decision of the international court of appeal given between the belligerent and neutral? I say the question can not be argued. In that case we are giving to this international court power in regard to all matters not regulated by this Declaration to add to the terms of that Declaration in accordance with what that international court of appeal, constituted as we know it is constituted, may consider to be in accordance with the principles of equity and justice. It is perfectly clear, therefore, that the statement of the First Lord of the Admiralty yesterday that this Declaration only deals with the rights of belligerents as against neutrals, and does not touch the rights of belligerents *inter se*, is founded on an entire fallacy, and that when we create this international court of appeal to regulate rights between belligerents and neutrals we are *ipso facto* giving it the power to regulate the rights of belligerents *inter se* in this sense, that we affect the rights of belligerents in so far as they may depend, for instance, for their food supplies on the service of neutrals in any future war. So much for the preliminaries of the question.

What is the real question at issue here between those who are in favor of the Declaration and those who are against it? I venture to submit that the real and dominant question is this: Are you to

regard as of primary importance the rights of this country as a belligerent, the safety of this country as a belligerent, or are you to regard as of primary importance its pecuniary interests as a neutral? The member for Hexham Boroughs (Mr. Holt) said he approached the question from the point of view of neutrals and that that was the right point of view from which to approach it. There can be no question I think that the point of view from which it ought to be approached is the point of view of Great Britain fighting as a belligerent, and fighting for her existence it may be. Even if we dealt with it from the point of view of neutrals what are the gains that are alleged? I agree, and I desire to be perfectly candid, that from the point of view of a neutral this country on the whole in my opinion does stand to gain from the Declaration of London. I want to be perfectly clear about that. I think it does. I think in view of the existing uncertainty of international law that to have three definite lists is an advantage to this country. One absolute contraband, one conditional, and one free list. I think it is an advantage, and that it is an advantage to traders to know where they are. Secondly, I think also, that in certain respects traders gain from the point of view of a neutral in so far as they are assured of compensation as a result of any breach of the rights of neutrals. Under present circumstances I agree that is a contingency that depends upon the effectiveness to a large extent of diplomatic intervention. I think an international court of appeal giving compensation would be greater security for compensation to neutrals than is afforded by the present diplomatic rights of redress. I agree. I want, if I can, to be fair, but when we are considering the position of the country as a neutral and reckoning up those advantages, let us on the other hand reckon also the losses.

There is one point, and particularly one point, to which as yet no member of the Government and no member on the opposite side—the side in favor of the ratification—has referred, and that is what is the position of the ship carrying contraband. Is the position of the ship improved under the convention—under the Declaration, as compared with the existing practice? Under the convention the provision is that if more than half the cargo by weight, volume, value, or freight, is contraband the ship is subject to confiscation. A good deal of loose language has been used in regard to this Declaration. It is important on this question to remember that there are three separate and essential and distinct acts that may be done in regard to a ship carrying contraband. One is the ship may be stopped, the second is the ship may be captured, and the third is that the ship may be confiscated. Perhaps I should have added a fourth, namely, that the ship may be sunk, as under the London convention it may be; but I am dealing with the right under international law

of a captor to have the ship which carries contraband cargo confiscated. Let us remember and keep clear that in dealing with contraband we are not dealing with enemy ships, we are dealing with neutral ships, and neutral ships only for this purpose, although under the Declaration of Paris it is quite clear questions of contraband cargo may even arise when carried in enemies' ships. I put that on one side for the moment, because it does not bear upon the argument which I am addressing to the House. I am dealing with the question of the prejudice to Great Britain under the convention in regard to its position as a neutral. Up to now a British ship, as a neutral in a war between two foreign powers is not, by the more generally recognised law of nations, liable to be captured because it carries any particular percentage of contraband cargo.

The only circumstances under which a British ship is liable to be captured for carrying contraband cargo are these: First, if the owner of the ship is the owner of the cargo. That used to be the common practice 100 years ago, and for practical purposes is non-existent under the conditions of modern commerce, so that we put that on one side. The second case, and I believe this to be the only case, is where the owner of the ship is himself interested in the adventure of running contraband cargo, with the knowledge that it is contraband cargo. What does that mean? It does not mean merely only in the case of conditional contraband if the cargo is one of those articles which come within the category of conditional contraband. It is, firstly, that the cargo is within that category, and, secondly, that it is destined for the military forces of the enemy. Knowledge of contraband in the case of conditional contraband connotes those two things, the character of the cargo, the description, and its destination. Unless the owner of the ship is privy to both those facts his ship is free from liability to condemnation. It is subject to capture, I agree, but it is not subject to condemnation. There have been a number of cases, particularly under the law of marine insurance against capture, where those two facts have been considered. The Attorney-General has had, I am sure, in recent years, experience of them just as I have had of a good many. The third eventuality in which a neutral ship carrying contraband may be captured, is where not only there are false documents, because that is regarded by the law of this country as comparatively venial, and by the law of most countries, but where documents have actually been destroyed under circumstances which indicate an attempt on the part of the captain to avoid the condemnation of contraband cargo, that is to say, in the presence of the enemy. That is, practically speaking, the only other case. That is the existing law. Let us compare it with the law of the Declaration. Under the existing law, for practical purposes in 99 out of 100 cases it is recognised

as legitimate trade for a shipowner to carry conditional contraband. It is only in the hundredth case that he risks the condemnation of his ship for carrying a contraband cargo. What is the position under the Declaration? If more than half the cargo, measured by weight, volume, value, or freight is contraband, a ship is liable to capture. I ask the supporters of this Declaration, who say that it is a great advantage to neutrals, to bear in mind the fact that this country, owning practically half the shipping tonnage of the world, is as much interested in this as practically all the rest of the world put together, and I submit that this Declaration, which prejudices the owners of ships in that respect, is, even from the point of view of neutrals, no great advantage.

I pass from the point of view of neutrals to the point of view of a belligerent. I can understand neutrals, such as shipowners, who are making money out of the shipping business, saying, "The advantage of getting compensation in the event of illegitimate seizures is so great to us that, on the whole, we are in favour of the Declaration." But I ask the House, viewing the question from the point of view of this country as a belligerent, what is the advantage to us, if our food supplies are stopped by the capture of the neutral ships carrying them, of the owners of those cargoes some years later when our population has been starved being given ample compensation by an international court? The two approaches to this convention, the belligerent approach and the neutral approach, are inherently different. Compensation presents attractions to the neutral, but it is nothing to the belligerent. When it is said that under this convention the rules safeguard the neutral, let us see what that means. Does it mean that it prevents the risk of capture of a neutral ship, or does it mean compensation to the owner of the neutral ship when it has been captured? If it means the latter, it is of no value to us as a belligerent. Under this Declaration I ask the House to come to the conclusion that it is the latter protection that is in the major degree given to the neutral. Looking at the question from the point of view of a belligerent, what are the gains which it is said this country gets? My own opinion is that as a belligerent we get nothing. The Under-Secretary of State, speaking last winter at the City Liberal Club, claimed that as a belligerent we should gain greatly by the rules as to blockade. What are the points on blockade? I must apologise for occupying so much of the time of the House, but it is impossible to deal with this complicated Declaration, which is thrown at our heads in this way, except in detail. The country through this House is asked to dispose of this Declaration in a debate extending over three days. I say it is impossible. It is impossible adequately to deal with the provisions of this Declaration in any de-

bate of three days in this House. The only way of adequately dealing with a matter of this kind is to discuss it before a tribunal of experts, who can give adequate time to the consideration of the whole Declaration clause by clause from the point of view of the interests of this country.

Let me deal with the question whether or not, from a belligerent point of view, this country stands to gain by the Declaration. The Under-Secretary of State says that we gain by the rule as to blockade. Do we? What are the changes? The changes in regard to blockade are broadly three. The first—and this is a substantial gain in our favour—is that we have not to give individual notice to each ship attempting to break blockade. It was said, under the foreign rule that was sought to be laid down, that every ship breaking blockade was, like a dog, entitled to one bite gratis, that it was entitled to break blockade, that it then had to receive notice that it must not do it, and if it tried it again it would be liable to capture. In regard to that the Declaration enforces the British rule that any breach of blockade is good, and that individual notice to each ship is not necessary so long as there is general notice given. But conversely, this collection of provisions as to blockade provides that once the pursuit is abandoned the right of capture for breach of blockade is lost. I submit that this is against us to a degree quite equivalent to the concession in our favour in regard to individual notice. The rule of international law at the present time is—if I am challenged on any of these propositions I have the text-books with me and can quote them if necessary—that a ship which commits a breach of blockade is liable to capture until the very end of the voyage upon which that ship is engaged, and according to existing law that includes not only the voyage out but the voyage home. When the Declaration lays down the rule that once the pursuit of a ship is momentarily suspended the ship is free from liability to capture for breach of blockade, we stand to lose very seriously.

Then also the rule that the zone of operations, limiting it very much in the old continental way according to some imaginary line drawn round the blockaded port, is against us. The real question is whether a blockade to-day with modern inventions is in naval operations of the same value to this country as it was 100 years ago. Even assuming that we do gain a little on these rules of blockade, are they worth much to us? I say little about torpedoes, because I am informed that the protection against torpedoes that can be adopted by a blockading squadron is almost adequate. But what about submarines? I understand that, owing to recent inventions, submarines can work at night, and, in the somewhat graphic language of the sailor who described it to me, a submarine can put salt on the propeller of a battleship at night without being seen and without its

being known. If that is so, what are the possibilities of a close blockade of any port? Even if a blockade were possible in these days of railways, with the railway communication to a blockaded port, would a blockade have the same effective operation as it had 100 years ago when the supplies of a blockaded port had to come by sea? I say not. I therefore put aside these rules about blockade, because if you get an advantage on those rules it does not count for much in modern warfare.

I come then to the part of the Declaration which does affect modern warfare, and that is the question of the food supplies of this country. That is the broad and big question. The honourable gentleman the member for the Tyneside Division was inclined to be facetious at the expense of honourable gentlemen on this side who have spoken on the subject of the food supplies to this country. He said we were talking as though the food supplies of this country at the present day were absolutely safe. Nobody on this side says that the food supplies of this country are safe at the present day. Everybody on this side on the contrary recognises that that is a weak spot in our national defence, and it is just because that is the weak spot in our national defence that we can not afford to make it any weaker. I think it was the same honourable gentleman who said that under the existing law food might quite easily be declared to be absolute contraband. All I can say is that that is not the view of the great majority of the jurists of the Continent or other jurists.

If I may I should like to quote from official documents. I have here "Miscellaneous Papers, No. 5, 1909," which contains the views of the different powers on the various subjects to be submitted to the conference in London. I should like to read to the House the views of the powers as to the existing law and the existing practice on this particular subject, and see how they stand. What did Germany say? They gave a list of absolute contraband, containing no foodstuffs of any kind, except preserved provisions, which might serve for the use of the troops. The United States gave a list of absolute contraband, containing no foodstuffs whatever. Austro-Hungary said in case the powers would not agree definitely to abolish the principle of contraband itself it would be at least extremely desirable to abandon that contraband that is called conditional. It would be dangerous to extend, by an international agreement, the idea of contraband beyond that of war material properly so called. Austro-Hungary, the House will note, wants to abolish all contraband except war material. Spain considers that relative and conditional contraband should be abolished. France that foodstuffs destined for non-combatants should not be as a matter of principle considered as contraband of war. They, it said, might be so declared under circumstances of which the Government was to be the judge, and by virtue of an order

emanating therefrom. Italy gives a list of contraband in which are no foodstuffs whatever, and makes no mention of conditional contraband. Japan divides the list into contraband and conditional contraband, the first-named containing no foodstuffs whatever. The Low Countries think that conditional contraband should be abolished. Russia gives a list of contraband containing no foodstuffs except *vivres spécialement caractérisés comme servant à l'armée*, which means provisions specially prepared for military purposes. These are the views of the powers when they went into the conference of London as to conditional contraband in general. The result of it is that with the exception of the doubtful view of France, not one of the powers includes food supplies on their lists of absolute contraband. Not one of them.

It is said that in 1885 France made rice absolute contraband in the war with China, but Lord Granville, on the 27th February, 1885—the note can be found in the Parliamentary Papers, I think it is No. 1 France of that year—protested vigorously against the proclamation by France, and after that there was not a single case of any cargo of rice being captured.

MR. PRINGLE. Was any cargo carried?

MR. LESLIE SCOTT. I do not know whether it was or not; at any rate that was an end of it. What is it that makes food supplies subject possibly to the disability attaching to conditional contraband? Obviously—we are agreed—it is their destination. For the moment let us look at the existing views of international lawyers and the powers of Europe, and the various powers of the world upon the subject of destination. Let us see what the existing law is in order to compare it with article 34. Again I quote from the Blue Books. They all practically say, as the United States say: "When they are actually and specially designed for the military and naval forces of the enemy." Japan says: "When they are destined for the military and naval forces of the enemy." That is the generally recognised view of the law, and that was the view expressed by the right honourable gentleman the Secretary for Foreign Affairs in his instructions to Lord Desart on entering into the conference. I quote from the instructions:

The primary characteristic of conditional contraband is its war-like destination, and in drafting the rules on the subject care should be taken to ensure that condemnation should in no case be allowed unless there is such evidence as would establish or lead to the overwhelming presumption that the destination of the goods was for the armed forces of the enemy and not for the civil population of a place occupied by such forces.

I would like to quote one or two books on the subject by writers of eminence. There is one by my honourable and learned friend the member for the Walton Division, who is a distinguished international

lawyer. In his recent book he epitomises the authorities on the point, and says:

The British rule is that proof of destination for the forces of the enemy is essential with the exception—

and so on. He quotes a little later the case in 1798 of the *Yonge Marguerita*, the decision in which was—that conditional contraband does not become contraband unless it is actually destined for the military forces of the enemy. It is asked by, I think, the First Lord of the Admiralty what is the invitation in article 31 to extend that destination further than the military forces of the enemy? The answer is obvious. If the rule of law is that food is not contraband unless it is going actually to the military forces of the enemy, why, under article 34, provide that it is to be contraband if it is going to one of the departments of state, even a civil department of state, or to any port which is a base of supply? Is there any port in this country which, in the case of this country being engaged in war, would not be a port used in fact for the supplying of some of the ships of the Navy? I ask honourable members to mention any single port in this country to which food supplies in case of war would come that would not be within that category. There is none. Glasgow, Liverpool, Bristol, Falmouth, Portsmouth—go round the coast of the country to every single port to which ships of the tonnage used in commerce for carrying grain in practice come, and every one of them would come within that description.

In these circumstances why invite the belligerent with whom we are at war to stop neutral ships coming to every one of our ports? It is said in regard to the doctrine of continuous voyage by those who seek to justify its abrogation in the case of conditional contraband (article 35), “What is the use of the doctrine of continuous voyage with regard to cargoes carried under bills of lading to Antwerp to be forwarded to an ultimate destination in Germany? We could never know that at all. Our cruiser captains could stop ships and search them and see the documents, but they could not compel the confession that their cargoes were ultimately for Germany.” I concede the strength of that argument, but I ask why, in the case of Great Britain, when the food supplies coming to this country and delivered at our ports are in all probability for the civil population, and only possibly for the military forces, I say why give the enemy the advantage under article 34 of a presumption that they are intended for military use? Why do that when they are in exactly the same difficulty as it is said we should be in with regard to the doctrine of continuous voyage as applied to corn going to Antwerp for Germany? The argument applies with equal force to every one of our ports, which are primarily commercial ports, and only secondarily military

ports. It is obvious that the enemy can not say *prima facie* that the cargo is destined for military purposes. Why then give the case away and say you may presume in this case that the cargo is intended for military use. Why put the onus upon ourselves, when it should naturally be put upon the enemy. Obviously this is a gratuitous invitation to the enemy to capture ships on the pretext that they are going to "ports of supply"; and what is the use to us if the ship is once captured of the possibility of the owner of the cargo getting compensation years afterwards from a prize court? This question of food supplies seems to me to be the critical question from the point of view of the belligerent.

We have finally this question of the conversion of merchantmen. I dealt with the way in which for practical purposes the conversion of merchantmen on the high seas into ships of war may be justified. At the outset of a war, and before the war begins, preparations will be made. Why should we, too, leave it open to foreign powers with whom we are at war to add that serious difficulty in the way of the feeding of our population in this country? We seem to have done everything in this Declaration to facilitate the operation of the enemy in interfering with the food supplies of the country. I challenge honourable members opposite to mention any single point in this Declaration which safeguards food supplies to this country, which in case of war will be of use and importance to this country and to the maintenance and security of our people.

SIR RUFUS ISAACS. I think the House will agree with me when I say that we on this side of the House have no reason to complain of many of the observations made by the honourable and learned gentleman who has just sat down, or of the spirit in which he has approached this subject. I myself, having a knowledge of him and of his experience in these matters, fully recognise that he was justified in directing the attention of this House to these matters, and I commend the greater part of his speech to the consideration and attention of the House, and especially of those who are in favour of the Declaration, because there has never been in the whole of this debate and in all the discussion inside and outside this House a more complete and full vindication of the Declaration of London upon one of its main aspects than we have had from the honourable and learned member. What is it we are discussing? The question before the House is in the first instance whether it is beneficial to this country to have an international prize court. Upon that I do not think there is much division of opinion, although I quite recognise that a former distinguished member of this House (Mr. Gibson Bowles) takes a different view, and has undoubtedly delivered many vehement and forcible speeches upon this subject, and holds the view, apparently, that we

should go back beyond 1856. I pass from that because, although there are one or two members who favour it. I do not think anybody will get up and advocate it in this House. It is certainly not a practical political proposition.

Let me deal with the subject from this point of view; that both sides of the House agree that it is desirable to have an international prize court, provided, of course, that you do not sacrifice too much in obtaining it. I understand that is the view taken by honourable members upon the opposite side as well as upon this. I gather that from what has been said during the course of the debate. Almost every speaker has avowed himself in favour of the establishment of an international prize court. I do not propose to labour. I may say later on a little about the constitution of the court as I have been challenged to do so. The next proposition is whether in establishing your prize court you must not have some agreed code of international law at any rate upon some points before you establish such international prize court. Again, I think upon that point there is not any difference of opinion. The views of the majority of honourable members on the other side of the House, as well as upon this side, are that it would not be well to leave everything to an international prize court, but you must have some rules of international law on which the court can decide, and it is only when you have not got an agreement that you leave the court to decide on general principles of justice and equity.

We called a conference, and discussed the various proposals until the Declaration of London was agreed to in the form in which it is now presented to this House. What is the real point we have to consider with regard to the Declaration? It is whether, on balance, we gain by it. It is no use selecting one particular item or article and discussing that unless it is of such overwhelming importance and of so dominating a character that all the rest, whatever the advantages may be, are useless. It is of no use doing that, and we must look at the Declaration as a whole. I doubt very much whether there is any responsible member of this House who would challenge that proposition. I think I am right in saying—and I have not heard any contradiction of it—that up to the present moment, in the various propositions I have put forward, there is no dissension of opinion, and we are all agreed. If you come to the conclusion that on balance the Declaration of London operates in favour of this country then we ought to pass the naval prize bill with its convention and the Declaration of London annexed, and leave the prize court to determine the principles on which it will adjudicate.

I agree that there is a further proposition. In weighing up the advantages you must consider this question from two aspects for

Great Britain. One of those aspects is that of a belligerent and the other is that of a neutral. I agree to this proposition that, although you might gain advantages as a neutral if you sacrifice your rights and interests as a belligerent, you do not gain on the whole. I do not think there is any difference of opinion on the other side of the House as to that point. We have never suggested on the part of the Government, and it has not been suggested by any honourable member who has spoken, that if the Declaration of London involved a sacrifice of our interests as a belligerent, and if our position was really prejudiced by what we have done, that that would outweigh any consideration of advantages we may get from our position as a neutral. I think that proposition is almost self-evident. On both sides of the House there will, of course, be a desire to maintain the security of this country, and to give nothing away which would seriously affect our interests. The proposition which I set out to prove is that we gain as neutrals and we do not lose as belligerents, but under this Declaration we get many advantages as neutrals, and we sacrifice nothing as belligerents.

I have one further proposition upon which I believe there will be no difference of opinion between us. I put this question definitely and clearly to the honourable member for the Exchange Division of Liverpool (Mr. Leslie Scott) who answered it equally clearly. The same observation was made to-night by the right honourable gentleman the member for Dover (Sir G. Wyndham). I think it is important we should bear this point in mind and not lose sight of it in this House and in the country. It is now admitted that this Declaration of London does not purport to deal with the rights of belligerents *inter se*. That is beyond all discussion. The right honourable member for Dover said he had never taken the view that it did affect our rights as belligerents *inter se*, and he also said that so far as he was aware those who acted with him outside the House had never taken that view. I think the majority of people who have heard the speeches made on this question, and all those who have read the speech made quite recently by the leader of the opposition in the city of London, will be surprised to hear that in the House of Commons where we are face to face with this matter and where questions have been put upon it, it is admitted that we in no sense of the word deal with the rights of belligerents *inter se*.

MR. LESLIE SCOTT. You deal with the rights of belligerents, but not belligerents *inter se*.

SIR RUFUS ISAACS. I think the honourable and learned member may rest satisfied that I am going to deal with his point. We must proceed by steps. Although he has made his admission quite frankly and fairly, I am bound to say that outside the House, amongst those

who are not in the position and have not the knowledge and experience in these matters possessed by my honourable and learned friend the same view has at any rate not been conveyed to the general public. I have spoken with men in the city of considerable position since the recent speech by the leader of the opposition, and I can assure this House that it is a matter of intense surprise to them to learn after that speech and after all the agitation and campaign which has been carried on in which I believe 157 admirals—there may be a great many more—have taken part; after all the documents which have been circulated to lead the country to believe that as belligerents our rights are being affected by the Declaration, and that our rights are affected as belligerents *inter se* by the Declaration, I say it is very important to have it made plain that the Declaration does not deal with the rights of belligerents *inter se*.

Let me now pass to the second part of the proposition which I am putting forward. I say that we gain as neutrals by this Declaration. If we gain as neutrals and we do not lose as belligerents, then we have established our case. I will take the honourable and learned member for the Exchange Division of Liverpool as a test of whether we gain or lose by the Declaration. I fully admit that the honourable and learned member has a right to speak on this subject with authority. I am sure his candour will be very much appreciated, and it is what I should have expected from a lawyer of his standard and reputation. What did he say about our position as neutrals? Not one of us in this House, however enthusiastic we may have been for the Declaration in its aspect affecting this country as a neutral, could have put the case more favourably to us than did the honourable and learned member. I took down his words, and he said the same thing twice, only he said it differently. First of all, the honourable and learned member told us that if you regard Great Britain as a neutral and not as a belligerent it is impossible to come to a different conclusion than that which we are asking the House to accept. In other words, that it was favourable to Great Britain. He went on to say, warming to his subject, that it might very well be, he quite admitted, it marked a distinct step in favour of neutrals. He continued in these words:

I agree this country, as a neutral, stands to gain by the Declaration of London.

That is the clearest and most distinct admission of the second branch of the proposition I am setting out to prove. He went on to say, and rightly say, that according to our view the three lists are an advantage: the list, first of all, of absolute contraband; secondly, the list of conditional contraband; and, thirdly, the free list of raw materials. They are a distinct advantage, because they give greater

certainly to neutrals and consequently mean there would be a greater influx to our ports under those lists. I entirely agree with what the honourable and learned member said with regard to that. A further proposition he put forward was this: "I agree," he says, "neutrals are assured of compensation, and, if there is a war and if Great Britain, as a neutral, has a shipowner or shipper who is suffering under any disadvantage or any injury from one of the belligerents, and makes a claim in the international prize court, the result will be that he is assured of compensation if wrong has been done." It marks a great step in advance, and the honourable and learned member admits it. He went further and gave the best answer that could be given to the right honourable gentleman the leader of the opposition. He said it was better to have that right of compensation in that international court than to have recourse to diplomatic rights of redress. That is the whole case which we are making upon this proposition. As one who has studied this question and has great knowledge, he realises how insecure it is to rest upon diplomatic rights of redress, of which we had very good instances with regard to the Russo-Japanese War. There are at this present moment claims of British shipowners against the Russian Government which are not settled, in spite of all the diplomatic rights of redress having been used both by the right honourable gentleman the leader of the opposition and his Government, and by my right honourable friend the present Secretary of State for Foreign Affairs. The honourable and learned member is therefore perfectly justified in the assertion that it is no use trusting to these rights of redress. I claim that so far we have got the greatest assistance from the admissions, candour, and fairness of my honourable and learned friend, whose speech, I say, was based upon knowledge and experience. What is the point which the honourable and learned gentleman used in argument against the Declaration? He said:

Yes, so far I should be in favour of the Declaration but our rights as belligerents are affected.

I followed him with great care, and his case, I understand, rests upon the danger to our food supply in time of war. He said something about blockades, but I do not propose going into that. I am sure the House will agree it is not necessary. If there ever was any necessity of dealing with blockades, it was disposed of by the opening speech of my right honourable friend the Under-Secretary of State for Foreign Affairs (Mr. McKinnon Wood), and, if there was anything left to be said, it would have been said long ago. The right honourable gentleman the member for Dover (Mr. Wyndham) very fairly said that really it was not worth going into, and he did not go into it. Therefore I think I am justified in not entering into the question of blockades. I will content myself with one observation about it.

The general opinion of the great jurists—I doubt whether there is any division of opinion upon this subject, although I agree there is on the question of contraband—is that in the articles on blockade we have got a complete code, precise, clear and distinct, so that everybody now knows what can be done and what can not be done and what are the rights and what are not the rights of neutrals under the blockade. That is an enormous advantage. It was discussed at considerable length by one of the most distinguished lawyers at the present time, both on this and other subjects, Mr. Arthur Cohen, who I am sure everyone will admit is peculiarly privileged to speak on this question and to speak with great authority. He occupies a unique position at the Bar of this country. Having given a considerable amount of study and attention to this subject, he has made his answer, and he has told us he is absolutely satisfied, and so far as I know there is no division of opinion upon it. That as one of the four points may be left out of consideration from this time. Before I discuss the three points which are left, may I make one further answer to the honourable and learned gentleman who last spoke? Both he and some other members on that side of the House have twitted us with bringing on this Declaration with undue haste. I think the honourable and learned gentleman used the expression, “Throwing it at our heads.”

Mr. LESLIE SCOTT. I did.

SIR RUFUS ISAACS. I have no doubt that was in the heat of advocacy.

Mr. LESLIE SCOTT. Not in the least.

SIR RUFUS ISAACS. It is exactly what I should have expected anyone to say in the heat of advocacy.

Mr. LESLIE SCOTT. I thought the learned Attorney-General said I had been impartial.

SIR RUFUS ISAACS. Yes, and I am not suggesting the honourable and learned member was not impartial. “The heat of advocacy” does not mean he was not fair or not candid or not impartial. What I meant was that he was carried away a little by his anxiety to make his speech against us, and I think those words went a little bit too far, but the matter is not worth discussing. It was a picturesque phrase—“Throwing the Declaration of London at the heads of the House of Commons.” What I wanted to point out was that it takes a long time to reach the heads of honourable members opposite, because, although in point of fact the Declaration was signed in February, 1909, I think I am right in saying the right honourable gentleman the leader of the opposition made his first speech about it some two or three days ago in the city of London.

Mr. BALFOUR. Did you want me to make it earlier?

SIR RUFUS ISAACS. I am quite ready to admit it might have been made earlier. All I say is that it was made then. I do not think the

right honourable gentleman will say there was any undue haste with regard to the Declaration, considering it has been discussed for a considerable time and that questions have been put again and again across the floor of the House during the last 12 or 18 months. It has often been discussed, though not in detail I agree. I do not want, however, to take up time in going into this subject. All I want is to repel the suggestion that there has been any undue haste in presenting the Declaration of London to the House of Commons two and a half years after it was signed. I may perhaps point out that the Blue Book which contains all that is material was presented to both Houses of Parliament in March, 1909.

It is said that this is being made a party question, and complaint is made that the party whips are not taken off on this side. One honourable and learned member went so far as to state that in consequence honourable members on this side of the House were deprived of the right of expressing their opinion. That surely is an extraordinary expression to use, when the honourable gentleman had before him the spectacle of the honourable and learned member for North-West Durham (Mr. Atherley-Jones) speaking against the Declaration in the city of London and also seconding the amendment now before this House: he, at any rate, does not seem to have been affected by the fact that the party whip is not taken off. Why are not honourable members on this side of the House to be credited with voting according to their views on a matter of this kind, which is of national importance—why are they not to be credited with voting according to their consciences because the Government whips are applied?

SIR F. BANBURY. Why put them on?

SIR RUFUS ISAACS. You could not put forward a measure of this kind, after all that has taken place upon it, and after the discussion at the conference called by the Government—you could not, I say, put forward a bill which is a Government bill, and treat it with any other way than as a Government measure. Can the honourable baronet give me any precedent on his own side of the House in which the Government whips have not been put on on such a measure? What would have been said if we had come down to the House and said—"We present this Declaration of London, but we take off the party whips?" The honourable baronet would have been one of the first to get up and say—"Yes, because you are afraid."

SIR F. BANBURY. We ask you to do it.

SIR RUFUS ISAACS. I resent very strongly the suggestion that honorable members on this side are not just as free to vote as they choose when Government whips are put on as honorable members opposite when the opposition whip is applied.

I pass to another general question involved in the Declaration. Let me say one word with regard to the international prize court, espe-

cially as I have been asked to do so by the right honourable and learned gentleman the member for Edinburgh and St. Andrews Universities (Sir R. Finlay), and by the honourable and learned member for South Bucks (Sir A. Cripps). The position is this: What is said is that we have acting as judges a number of members, including those representing some of the smaller States, such as Paraguay, Haiti, Venezuela and other States. There are altogether 44 countries who are involved in this Declaration. There are 44 who are parties to the convention. Out of the 44, 8 of them may be called the great powers, and then beyond those there are a number of smaller powers, who are treated as judges, and there are others who are treated merely as deputy judges. The 8 representatives of the great powers are always selected for every court. They are permanently on the list, and have to be summoned to every court. Then there are the minor powers, who have the right to appoint judges who are summoned only if they are on the rota. You have 8 representatives of the great powers, there are 36 States remaining, and there are only 15 judges altogether. You have to apportion among the 36, 7 judges in each rota. Some of the representatives of the minor States do not act as judges unless one of the judges is ill or for any reason is prevented from attending. [An honourable member: "Venezuela has a judge."] I am not discussing whether Venezuela has or has not, but some of the minor States have deputy judges who are only called in to sit in point of fact when one of the regular judges is ill and can not attend. The whole time a man is on the rota he may not be called upon at all.

The point is made inside and outside the House that we are allowing these matters to be judged by States like Honduras and Paraguay, but they are only countries with deputy judges who never can be called upon to sit at all. Out of the whole 15 judges the composition of the court must consist of the 8 who represent the great powers, and the 7 are selected from such countries as Norway, Holland, Spain and the Argentine, who send their most distinguished jurists. It does not follow, moreover, that because a country is a small power that it has not a distinguished international lawyer. I think I am right in saying that in the Newfoundland fishery arbitration, on which the right honourable gentleman the member for the University of St. Andrews (Sir R. Finlay) distinguished himself, one of the arbitrators selected came from the Argentine, and was recognised as a distinguished jurist. We have had other arbitrations, and I can name representatives from Holland and Norway who were selected to sit on those arbitrations because they were distinguished jurists, although they belonged to small countries.

When you add one further point, that under these articles the judge who is appointed must be a jurist of known proficiency in

questions of international law, I think you meet the objections which are raised with regard to the constitution of the court. It is for the purposes of the point we are discussing here quite a small one.

Now let me pass to what is much more important, that is the three subjects upon which there is division of opinion between us. First of all I take food supply, because it seems to me the most important. It is the one with which the honourable member (Mr. Leslie Scott) dealt during the whole of his speech, and the one which was referred to at greatest length by the right honourable gentleman (Mr. Balfour) in his speech in the city. The question of the food supply in time of war is no new problem for this country. For a number of years we have recognised that it is a very serious problem. There was a royal commission on it, of which the right honourable gentleman told us something last night. He explained a great deal of what had happened there, and gave us some interesting and useful information. To what decision did they come? I am going to refer to it here. I think it has so much bearing on the question we are now discussing. It was a very distinguished commission, and the present King, then Prince of Wales, sat on it, and after going into the matter at great length the conclusion at which they arrived was that the only way in which we could safeguard our food supply in time of war was by relying upon the strength of the navy.

MR. CHAPLIN. There were two reports.

SIR RUFUS ISAACS. That is the report of the majority. Then I take one further report, which deals with a kindred subject. There was a committee which sat and reported in 1908 on the national guarantee for the war risks of shipping, of which the right honourable gentleman (Mr. Austen Chamberlain) was chairman. The question whether there should be a national guarantee for the war risks of shipping is very closely allied to the subject of food supply in time of war. Underwriting, insurance, is at the very root of this problem. This is what the committee say, after again a most careful inquiry:

In our opinion neither of these conditions holds good. We are, therefore, unable to recommend the adoption of any form of national guarantee against the war risks of shipping and maritime trade except that which is provided by the maintenance of a powerful navy.

MR. CHAPLIN. What the honourable and learned gentleman has just read was precisely the view which was taken in the second report.

SIR RUFUS ISAACS. We have at least the satisfaction of knowing that we are agreed upon that. Throughout the discussion of the Declaration of London I ask the House to bear that in mind because that again is a matter which is of the utmost importance in discussing this problem. It has been discussed by many honourable members on the other side of the House as if we depended for our food supply

upon the food which is carried in neutral bottoms. Not for one moment. Of course we depend first of all upon the food supply we have in this country, then we depend upon the food supply which is carried in our own vessels, and we depend only to a small extent, and proportionately to a very small extent upon the food which is carried in neutral vessels. What is the position with regard to this matter? It is said by some that conditional contraband is introduced by us in this Declaration. I do not think that there is any lawyer or any person who is not a lawyer, who has studied the question, who will assert that. Food has never been free in recent times. There is no question about food being free like raw materials, of which we have a free list. The only question under discussion is whether food shall be regulated as conditional contraband or whether it should be allowed, as at present, for some countries if they choose in time of war to say that it shall be absolute contraband. The point of the Declaration to which we attach so much importance is this. We say with regard to food that you must not leave that in any doubt. This is a matter of very great importance, and you must not leave that in uncertainty if you can secure certainty. What has been the argument in regard to this? It is said "There is no country which up to the present moment has declared food as absolute contraband, and by your article which says that it is conditional contraband you are giving something away, because you have introduced certain assumptions which are objectionable." Is that the right view to take?

Let us just examine it for a few moments. I say that to some extent I find myself in agreement with the noble lord the member for Portsmouth (Lord Charles Beresford) who spoke to-night. I would discard text-books of 100, 150, and 200 years ago on this matter. I would look upon them as useless for the consideration of the present-day problem. I am in entire agreement with him. For once I say with him "throw lawyers overboard," and I fancy he would have no great hesitation in doing so if he got the chance. I have to sail under his flag for the moment. I wish to disregard lawyers for this reason. I am sure no jurist will contradict me when I say that you can quote text-books either way. The change of a word in a sentence, a slight alteration of a phrase or a sequence of phrases, makes a difference, and the consequence is that you do not get anything very definite. There has been very much discussion upon the question. You have only to look at the opinions of distinguished lawyers for whose opinions I have very great respect. If you take their opinions for and against the Declaration you arrive at nothing, and for this reason. It is not a lawyer's question whether or not food will be declared absolute contraband by any country when you come to a state of war with that country. It has then passed outside of the lawyers' region.

It is a question what you think as a politician, or as a business man looking into the future. What will happen if there is war? That is what you have to look to. I am quite sure that so far the noble lord will agree with me when I say that it is useless for me to quote textbooks in support of the view I am stating. What we are saying is substantially what has been said by many eminent jurists, although you could produce some who have said not quite the same. I am not going to quote these opinions, for the reason that my submission to the House is that we must look at the question in the light I have indicated. I am not attempting to deal with this in a controversial spirit. My view is that this is a most important matter, and that we have to consider it as such.

I want the House to take the wars that have occurred in the last 25 years. Go back to the wars which have happened, we will say, since 1884, and you will find this, that one country asserted a right to declare food absolute contraband. The House will forgive me one moment for stating what is meant by this. It is only for the sake of clarity. It means this, that whatever food is coming to a country which is a belligerent, whether it is to be used for military or naval purposes or not, whether it is to be used for the civil population or not, may be seized and captured by the other belligerent, and the vessel that carries it may in certain circumstances be condemned. That is what is meant by it, and the country which claimed it in 1885, and which, it is said, has abandoned the claim or does not persist in it, was France. France, of course, is only an instance of what any other country may do. I may point out to the House the difference between this country and, at any rate, some foreign countries. If contraband is seized by a belligerent it clearly will not be seized by us. In the ordinary course it would not be seized by us, and it would be seized by the belligerents. Then it is taken to the captor's court, not to ours, where the matter has to be discussed and dealt with by the court, which adjudicates upon the matter according to their law and not according to our law. I agree with what was said I think by the right honourable gentleman the member for Durham (Mr. Atherley-Jones)—it has certainly been said in the course of this discussion—that our prize courts stand very high in the estimation of other nations, because they really attempt to deal in a fair and impartial way with claims that have come before the court, irrespective of the fact that they are dealing with a foreign claimant. But that has not been the position with regard to other countries.

Our law, at any rate, has been fairly clearly defined, but foreign law you never know until you are at war. That is a most important thing, which honourable members must bear in mind. When a foreign country goes to war, what it does is to declare by means of the

executive to the courts what shall be and what shall not be contraband, so that you do not know, as you do in this country, or as you have hitherto known what is to be treated as contraband and the ship-owner or shipper can not tell until the decree comes forth, and that may be followed by another decree when the ship has already sailed, and he may find a decree from that foreign belligerent making the goods which he is carrying contraband and exposing him to the risk of capture, and the unfortunate condition of having to prosecute his claim, say, in a Russian court in order to recover his money. That is a state of things which we must remember happens when we are at war; what it is a foreign country may do. I am not saying that a foreign country has done it. That is not the point. What we are looking at at the present moment is what may happen. What is it we ought to expect to happen, and, at any rate what it is in this most important question of food supply of this country that we ought to guard against? What is it against which we must secure ourselves? It is against the declaration of food as absolute contraband. It may be said there is no fear of it. The honourable and learned member for the Exchange Division (Mr. Leslie Scott) when he was reading out the claims that had been put so recently at a conference out of which this Declaration sprung read what France claimed. It was read by my right honourable friend the Under-Secretary for Foreign Affairs. France has claimed in definite terms the right to declare food absolute contraband. What is the use of that in the year 1907 and onward to 1909, when France intended to enforce the right she claimed in 1885, and when, at this very moment that we are asking her to come over and assist us in arriving at an agreement, she persists in the claim she made then to reserve to herself the right at any time, if circumstances demanded, to declare food absolute contraband? The same thing would take place with regard to Germany. You have had the quotation from Prince Bismarck. There is much play to and fro as to whether Prince Bulow withdrew or did not withdraw it. It seems to me following the discussion in this House that it has never been withdrawn. Really, I do not care whether it has or it has not. That is not the point. The point is what would happen if you were at war with France. France reserves to herself the right in terms to declare food absolute contraband. Germany approved that course in 1885, because Prince Bismarck, a perfectly shrewd and sagacious statesman, saw that it would not do for him to disagree with the view of France, because the time might come when the circumstances would necessitate for the safety of Germany, if it were pressed in a naval war, that she should declare food absolute contraband. Therefore he approved it in this sense, when he said it was justifiable so long

as you make the rule apply to all neutral countries. Take again what happened in the Russo-Japanese War. There you had another case of food being declared contraband. All these considerations serve to prove—and this is the only proposition I am seeking to establish—that you can not rest your case upon what happened in the Napoleonic wars. They are not of very much assistance when you want to make food absolute contraband. You will not find that what took place in this country in 1812 or in 1793 will assist the advocates of the view of to-day, that no country has sought to make food absolute contraband.

I agree with the right honourable gentleman the member for Dover (Mr. Wyndham), who, I think, took the same view, that it is not of much use to go back to those instances. I deal with what has occurred in recent times, in the changed modern conditions under which we now live, which are the conditions we must take into account. I think the most important consideration is that it is known that the food supplies of this country are of the greatest importance to us, and that therefore an enemy who wanted to attack us, and was in difficulty, would, if he could gain anything by it, declare food absolute contraband, in order to use it as a weapon against us and do the very thing which the noble lord (Lord C. Beresford) has pointed out, on this and other occasions, namely, to bring about the danger of preventing the food supply from flowing freely into this country. I would ask the noble lord to consider that for a moment. He has had experience. Suppose you have a country at war. They are pressed and in difficulties, and in no sense under any treaty or agreement. They could use their right to declare food absolute contraband. If they did so it would be injurious to us. At any rate, if our enemy is pushed it would take advantage of the position and declare food absolute contraband. I agree with the noble lord that that is what would follow, and that is the very thing we want to guard against. It makes our case. It is the foundation of the Declaration of London. It is to protect the food of the people of this country, and to keep it as cheap as we can. It is for the flow of foreign food into this country that we want to have this Declaration of London. We want it in order to take care that we shall never have food declared absolute contraband. I am quite sure the noble lord will agree with us in that. If that is so, then I submit the advantage claimed for this Declaration is made out to the full. The most vital thing, as everybody agrees both on this side of the House and the other, is the security of our food supply. What is it we are seeking to do by the Declaration? Having got food declared only conditional contraband only under certain circumstances, and having ruled it out of the list of absolute contraband—

Mr. LESLIE SCOTT. It makes it absolute contraband.

SIR RUFUS ISAACS. I am really astonished——

MR. LESLIE SCOTT. I do say that the practical effect as regards this country is to make it absolute contraband.

SIR RUFUS ISAACS. I notice from experience that when some one is pressed and asked to give a definite answer and say "the practical effect," he means it is not so but he does not wish to say it. I am not in the slightest degree attempting to get away from the point which the honourable and learned member made and which has been made in a good many other statements. It does not make food absolute contraband. It might, if you like, make difficult the conditions for conditional contraband, but that is a very different thing from absolute contraband. As the honourable and learned gentleman himself pointed out and told us, there is a list of absolute contraband that deals with what is absolute contraband under this Declaration, and all the goods within that are absolute contraband or what may come within the same class of goods, practically speaking.

MR. LESLIE SCOTT. I do not mean in the technical sense, but as the practical effect.

SIR RUFUS ISAACS. The honourable and learned member spoke of the loose language which is sometimes used in discussing this question, and no one knows better than he does that it is much better to keep to the technical expression, because it is a compendious form which we all know and recognise. Absolute contraband, therefore, is ruled out. Our policy is to protect shipments in neutral vessels from neutral shippers to these shores. You may differ from us as to whether we shall by the Declaration be able to carry out that policy. You may say it is your view that we do not effectuate it, but that is the policy. What we are seeking to do is this. We want to see all food that will come to this country attracted in time of war. The great difficulty in the way will be cost. I am sure all business men in the House and ship-owners will agree that the test in this matter, however sordid it may seem, is cost. It is cost that is at the bottom of the whole of this discussion. Whether it affects Great Britain as a neutral or belligerent, it is a question of the cost of the food. If you can attract food in neutral vessels you of course save the situation, and you can only do it by making your route certain and easy for the ship-owner, and that means for the underwriter. The shipper is going to ship, and the ship is going to carry the cargo, and the shipper will want to insure his goods. It is for the underwriter to see what is the risk. Uncertainty in the risk he is running is the most expensive form of insurance there is. If you go to an underwriter at Lloyd's and want to insure against something which is quite incalculable, so that the underwriter, although he knows perfectly well that it is a risk, is not able to measure it, he, of course, demands a higher premium. But if you go to him and say,

"This is the risk you run. If the ship you are asked to insure is captured, condemned, and sunk, you will have a right to claim compensation, and, if the captor's court does not give it to you, you will be able to go to an international tribunal, which will decide impartially on the question and give you the compensation. Therefore, you, as an underwriter, will be entitled to step into the shoes of the insurer if his ship is seized, you will be able to go to the court and recover the compensation payable to the owner"—if you say that to the underwriter, who is in the habit of measuring these things and whose business it is to calculate such matters, he works it out, and he sees for himself what are the risks he runs. He knows, first of all, that there is no danger of absolute contraband. That removes one great burden. As soon as he knows that he can only be brought in under conditional contraband he is able to measure his risk. As I have shown the House by reference to articles 33 and 34, which have been so much discussed, in almost every case, or in the majority of cases in which vessels may be condemned or sunk, compensation must be payable by virtue of the very terms of the articles with which we are dealing. The burden which is placed upon the captor and which he has to establish in the court before he can make out his right, if he has sunk a vessel, is a very serious one. It is one which it is very difficult for him to discharge, and unless he does discharge it he is ruled out, and has to pay compensation. It is not an unfair deduction to draw from those articles that in most cases in which you do get the sinking of a merchant vessel there will be a right to claim compensation from the international prize court. That assists the shipper, the ship-owner, and the underwriter, all tending therefore to keep down freight, the freight being determined to some extent by the cost of insurance. If you keep down the premium payable to the underwriter you keep down the freight and the cost of the goods which are being shipped, because they all have to be insured, and it is all a question of insurance.

Therefore the result will be that, if we are right in saying that we have made it more certain for the shipper and the ship-owner if the goods that are shipped are shipped in a neutral vessel, we are right in saying not only that we have given a great advantage, but also that we are helping the flow of food into this country. I pray in aid also what the honourable member (Mr. Leslie Scott) said in regard to it. He admitted that it was the case with regard to neutrals, and that is the thing upon which everything depends, both as belligerents and as neutrals. The question to us is whether we can get the food. If he is right in saying, as he did say, that as belligerents we should suffer because food would not be brought into this country in neutral vessels in consequence of the danger which would be run either of being sunk or captured or condemned—if

he is right in saying that to us as neutrals it would be an advantage to have this Declaration because we shall have a greater certainty as to what will happen, equally there must be greater certainty as to what will happen when we are belligerents.

MR. LESLIE SCOTT. The advantage to us as neutrals would be that we would get compensation.

SIR RUFUS ISAACS. There, again, the honourable and learned gentleman introduces one of the fallacies which have been underlying the whole of this discussion. He says: "Only if as neutrals you are doing this." How on earth are you to carry out your policy, and how on earth are you to get food of any kind in unless you have the British Navy at your back in order to help you? If you do not agree with this Declaration, and if you refuse to ratify it, can anyone tell me how we could be one penny the better off? If we sign the Declaration, at least according to the view now as we understand it on the other side, neutrals would be better off. That is conceded. We have got so far. The honourable and learned gentleman, who speaks with as much authority as anyone on the other side of the House, allows that. Well then, if as belligerents we have to deal with the question, if again your food which is going to be introduced is coming in neutral vessels, is the advantage greater or not? I do say that we as belligerents gain, because if the neutral has the advantage the neutral will continue to bring food into this country, and the moment you admit that a neutral gains under this declaration, it follows that you encourage people when we are belligerents to bring food to this country. I do claim that we have proved from what has been said upon the other side as clearly as possible that our food supplies will not be affected by the Declaration. I am far from saying that what the noble lord said is not correct. He said, and I dare say it would be true—and he speaks with far greater knowledge than I could possess upon this subject—that if he had any doubt—and I have no doubt what he would do—if he thought a vessel was carrying contraband, and he wondered whether he ought to sink her or not—I have not the slightest doubt as to what would happen—nor doubtless has the noble lord. Intrepid commanders on the other side would doubtless do the same. But what Declaration would ever stop that? You could only stop that by the strength of your arms, by a strong navy.

LORD CHARLES BERESFORD. It is not strong enough.

SIR RUFUS ISAACS. If that is not strong enough, then all this discussion is by the way. If it is not strong enough, and you can not protect your shores and ocean routes, then it is not much good discussing what will happen with regard to neutrals. None of these will come in if you can not keep your own shores. Before I deal with the destruction of neutral prizes I should like to refer to the

complaint of the noble lord that we have not sufficient cruisers. The policy of providing these cruisers was not the policy of this Government, but the policy of the Government of the right honorable gentleman the leader of the opposition; but a policy I should say that the First Lord of the Admiralty quite agrees with. I am not seeking to impute blame, but only saying, in answer to the noble lord, that he must bear in mind that both Governments have taken the same view, and that again the whole question upon which he based his argument was not the Declaration of London, but that he thinks we want a stronger navy.

LORD CHARLES BERESFORD. Cruisers.

SIR RUFUS ISAACS. Yes, cruisers; he introduced the subject very skilfully into the discussion, but it had very little relevance to the point as to whether or not we should accept the Declaration—

And, it being 11 of the clock, the debate stood adjourned.

Debate to be resumed upon Monday, next (3d July).



JULY 3, 1911.¹

NAVAL PRIZE BILL—DECLARATION OF LONDON.

Order read, for resuming adjourned debate on amendment to the question (28th June), "That the bill be now read a second time."

Which amendment was, to leave out from the word "That" to the end of the question, in order to add instead thereof the words "in view of the strong expression of independent expert opinion on the part of many important business and commercial bodies and of high naval authorities against the ratification of the Declaration of London, and in view of the fact that the Declaration, if ratified, will be binding on this country for at least 12 years, this House declines to proceed further with the naval prize bill until the whole question has been submitted to and reported on by a commission of experts to be appointed for that purpose." (Mr. Butcher.)

Question again proposed, "That the words proposed to be left out stand part of the question." Debate resumed.

The ATTORNEY-GENERAL (Sir Rufus Isaacs). When the House rose on Thursday last I had very nearly finished the observations which I intended to make on the matter now before us, more especially in relation to the food supplies aspect of it, which, of course, is the most important. I want to say something in reference to article 34, upon which I promised to make some answer to the arguments put forward on the other side of the House. I want particu-

larly to call the attention of the House to the way in which this stands. Under article 33 conditional contraband is liable to capture—food is liable to capture, if destined for the use of the armed forces of the enemy, of a Government department, and so forth, as it appears in the article. That is the governing clause in relation to food supply. Article 34 is one which has been a good deal criticised. It only raises the rights of presumptions, presumptions which are abutable; that is to say it deals with the rules that provide for this: that although food under article 33 is liable to be captured it is only if it can be shown to be destined for the armed forces of the enemy. It is to prove the case by presumption which is dealt with in article 34. Article 34 of course, does nothing more than that. It adds further, that you can rebut a presumption, which is not to be taken as conclusive in any way. I know quite well it may be said, "Oh, yes, but what is the value of that—to rebut a presumption if there has been a capture and if there has been a condemnation!" Let me answer that at once. What the article does is to provide for the rights of neutrals; to provide also for the rights which have to regulate the supply of food into this and other countries. All that happens under these two articles is that rules are laid down which are to guide those who are carrying food or to guide belligerents so that they may know how the matter stands.

I do not for a moment suggest that it would be impossible that there could be no seizure of food unless it could come exactly within these rules. I am quite sure the noble lord opposite would be the first to agree with me on that point. That must depend, whether you have this rule or not, upon the individual view of the commander and upon the instructions that he will have got from his Government when he sets out. So that you must always leave the matter in this condition: rules are laid down with the right of compensation if any wrong is done, but it rests in the discretion of the commander under the instructions which may be given to him by his Government. He, of course, can not be fettered in any way. It may very possibly be, notwithstanding this article, and, indeed, in defiance of it, and of a proper construction put upon it, that a commander may take a somewhat elastic view of the duties imposed upon him. I have read a good many articles containing a good many views upon this subject, and, generally speaking, it has been stated by the military and naval authorities who have been writing, that an officer would not be worth his salt if in case of doubt under the circumstances suggested, he did not stretch the point in favour of his own Government. It is not for me to express any view upon that. All I desire to say is that under this article we are providing that if that happens, there shall still be the right of compensation,

so that the international prize court, if appealed to from the captor's court, will be able to say that so much must be paid by way of compensation. I entirely agree with the view which has been expressed by the Lord Chancellor as to the construction which is to be placed upon this much discussed word "base." That view I should have thought would be accounted the only sound one. It would be an utterly meaningless or absurd article if the contention, which a good deal has been said about in this House, should really be held to be right. Obviously it is not for me to argue here at any length as to what construction might be placed upon that word except to point out that, put at its highest against the Government view, it will never amount to anything more than this: that the position as it is at present in regard to other powers, if you have the Declaration or if you have not the Declaration would be exactly the same. I am assuming for present circumstances that the strongest view of the position against the Government contention should prevail. If that is the case it is no worse than the present position. You still would have under the present condition, the exercise of this discretion on the part of the commander to which I have already adverted, and you still would have the seizure of any food which was going to a port which it was thought was destined possibly for the use of the military or naval forces of the enemy. For my part I can only say with reference to this part of the argument which has been raised against the Declaration that I do not think I could put it any better than in the language which has been used by Lord Lindley, the distinguished judge, who wrote a letter to the Times, in which he dealt with the Declaration, considered both from the position of this country as a neutral and as a belligerent. He took the view definitely and clearly that it was far better for this country that the Declaration should be ratified. He dealt with the point to which I have just referred, he dealt with the articles on contraband, and this is what he said—I give it to the House simply because I am sure the House will pay considerable attention coming from his lordship:

As belligerents, we shall not be worse off on the whole if the Declaration is ratified, whilst as neutrals we shall be very much better off. To neutral nations the articles relating to contraband goods are a very great gain, and this country when neutral will benefit by them.

That statement of Lord Lindley really confirms all the arguments that I have adduced to this House. I want to deal very shortly—because the House has been very patient, and has listened to me at greater length than I intended—with the two remaining points, which I have covered to a great extent by what I have said on the aspect of the food supply. One has regard to the destruction of neutral prizes. I want to call the attention of the House to where these

stand under the article. As I read what has been said by the right honourable and learned gentleman the member for Edinburgh and St. Andrews Universities there is, I think, very little difference of opinion between us. Article 48 says that the neutral vessel must not be destroyed by the captor, or in other words, when a neutral vessel has been captured, and has been taken into port, there must be adjudication before there can be any condemnation, and quite clearly the captor is not entitled to sink the vessel under that article.

LORD CHARLES BERESFORD. He will sink it.

SIR RUFUS ISAACS. The noble lord says he will do it. The noble lord reminds me that lawyers and sailors do not agree sometimes. All I say is that I am stating what the law is. Whether the sailor will carry it out or not I can not say. I am only stating what has been agreed and what will be the basis of any claim in favour of the neutral. As the noble lord knows so much better than I do what a sailor would do I accept his view when he said he would sink it, but he would still be bound to make compensation and that is what we seek to establish, and if we do not provide that compensation will be paid the neutral vessel will be sunk and there will be no compensation. The noble lord must agree to that extent we are better under the Declaration. There are exceptions I agree. I agree with the right honourable gentleman the member for Bootle (Mr. Bonar Law) when he said there were exceptions, but you must first get a statement of the law to which of course there are always exceptions. The right honourable and learned gentleman the member for Edinburgh and St. Andrews (Sir R. Finlay) read some passages showing that there must be some cases of exceptional necessity. As the law is based as between belligerent and neutral the belligerent is not entitled to sink the neutral, but nevertheless it might be a highly meritorious act on the part of the officer who is acting in command of a belligerent vessel. It may be that although he does something which with regard to the neutral is quite wrong under the law, nevertheless he may—I think I am using the exact words of Lord Stowell—be doing not only a meritorious act but it may be his duty to do something that may be declared to be hereafter a wrongful act.

MR. CAVE.¹ Is not that in regard to the enemies' ships?

SIR RUFUS ISAACS. I think not. What the honourable and learned gentleman has in his mind is different. I think in one sense it was an enemy's ship, but it was a ship that strayed into the British lines and for this purpose was in exactly the same position as a neutral. I do not want to pause now and to take up time in referring to the authorities. Of course, the honourable and learned gentleman is well able to appreciate the point himself. But apart from that altogether

¹ Conservative.

our rule always is that if we did destroy a neutral vessel and if we did sink her we pay compensation, and we are at this disadvantage, that while we always pay compensation, other countries sink neutral vessels and do not pay compensation. What we are anxious to do is to say to other countries, "If you do sink a neutral vessel and can not justify your action under the very stringent rules of these articles, then an international prize court shall have the jurisdiction to order you to pay compensation." And to that extent again, apart from other questions in the balance, we gain this very crucial advantage, that we place ourselves in something like an equal position with other countries, and we establish that for the first time, what has been our practice, is to be recognized as the practice by foreign countries, and our shipowners, when acting as neutrals, will be enabled to receive compensation if damaged, instead of being placed in the position which we saw and deplored, but for which we could find no remedy, until this Declaration, such as that which happened in the Russo-Japanese War of 1904. That is the position.

I call attention to article 51 which makes this claim, that there must be exceptional necessity before a neutral vessel is sunk. I do not think that during the course of this debate enough importance has been attached to the "necessity." The exception which is provided for in article 49, and referred to again in article 51, is that you can not sink a vessel unless there is exceptional necessity—either danger to the safety of the ship or else there must be presumption that the success of the operations would be very seriously interfered with otherwise. That is the position. I content myself with making these further observations upon it. Honourable members will find in the report of our British delegates to the Foreign Secretary that this matter has been discussed, and it must be borne in mind there was a large majority against the view we put forward, and which resulted in this safeguarding of the matter on the lines which has been substantially our practice:

The delegates reported that those representing other powers which had been most determined to vindicate the right of destroying neutrals declared that the combination of the rules now adopted respecting the destruction and liability of ships practically amounted in itself to a renunciation of the right in all but a few cases.

That I submit to this House is a full vindication of the position taken up by us in regard to these articles relating to the destruction of neutral vessels. No one has suggested for one moment that it would be an advantage to the neutral to have his vessel sunk. That, of course, would be a travesty of the arguments put forward. What we say is that if a neutral is to have his vessel sunk under the conditions of war it is better for him that there should be an international prize court to grant him compensation if his vessel is destroyed.

I now propose to deal with the last point upon which I think there has been any argument during the course of this debate, and that is the conversion of merchantmen into ships of war upon the high seas. The whole point is whether that conversion should take place upon the high seas or in the territorial waters and port of the country in which the vessel is found. We, of course, asserted the right, and always have asserted the right, that you may convert merchant vessels into warships provided you do it within territorial waters and in the port. What is pointed to very seriously is that a belligerent might be entitled to convert these merchantmen into ships of war on the high seas without any notification. We have not in the slightest degree given way upon that point. I am very anxious the House should understand that. I believe I am right in saying—of course, I can not be quite sure—that the noble lord (Lord Charles Beresford) attaches the greatest importance to this point, and that this is to him a most important matter. I agree, it is a most important point, but the noble lord will forgive me for pointing out to him that this point is not dealt with in the Declaration of London.

LORD C. BERESFORD. It is left open.

SIR RUFUS ISAACS. It is open in this sense, that we have not been able to agree, and it has been left unsettled. I will deal with the question of its being left unopened and what is in the minds of some honourable members about article 7. What I am on now is what the Declaration of London does. The Declaration of London does not touch this point in any aspect. We were not able to agree on this point, and therefore there is nothing in the Declaration which deals with it, and the argument put forward by the noble lord and those who follow him and espouse his views and come to the same conclusion are based upon this. That the Declaration of London and the naval prize bill, together recognised the right of foreign countries to convert merchantmen into war vessels upon the high seas.

LORD C. BERESFORD. I do not think that is quite what happens. We hold this as an important point. There is nothing definite about it, but the question is how are we to meet it?

SIR RUFUS ISAACS. What I intended to say was substantially what the noble lord said. What I am anxious to impress upon the noble lord and what leads me to claim him as a supporter of the Declaration is that if that is his objection to the Declaration he must brush it aside altogether, because it has nothing whatever to do with the Declaration. We expressly left it out. But the noble lord would say you ought somehow or other to have arrived at an agreement and embodied it in the Declaration. I agree it would have been a very desirable thing, but we were unable to arrive at an agreement, and the question the House has to put to itself is this, whether we should have thrown up all the advantages we think we get under these ar-

ticles because we could not arrive at a settlement upon this point. I think I am right in interpreting the noble lord's views when I say that he would have us say, "Take nothing if you can not get that." That does not seem, if I may say so, good sense. I hope the noble lord will forgive me, and I am quite sure he will understand I do not mean to be offensive. It does not seem to me to be good sense for this reason. If the articles in the Declaration are to the advantage of this country as neutral and to the advantage of other countries as neutral, why should we give up our advantages on these points because we were not able to agree on another point upon which we remain unfettered and upon which we stand exactly as we did before, and upon which we say as we can not agree upon this matter we will not compromise? The noble lord will agree with that view.

If you say we must not compromise, and we take a firm stand upon and will not recognise this conversion of merchant vessels upon the high seas, it is impossible to agree, and therefore we leave this point unregulated. That is how we stand. I do not want for a moment to leave out of consideration the point argued upon this, and I think it is the only point. I am trying to do justice to the arguments of honourable members upon the other side of the House. I think I am right in saying that the only argument put forward against us on this part—I will not say of the Declaration of London but the naval prize bill—is that it is said in article 7 of the convention annexed to the naval prize bill if there is no agreement between foreign countries as to convention agreement or treaty and no agreed rules of international law then the international prize court must decide according to the principles of justice and equity. And the view urged against our view is that the international prize court may have a question in years to come to deal with in which a neutral may be a claimant against a foreign belligerent because the foreign belligerent had converted a merchant vessel into a warship and because that warship had sunk or otherwise damaged the property of the neutral; then the neutral comes forward and makes the claim. May I point out that this is the only way, and there is no other way in which this matter can be brought before the international prize court. The court can not regulate the relations between belligerents *inter se*. It is common ground that the Declaration does not touch the rights of belligerents *inter se*.

All that can happen is that your neutral may make a claim. Then comes the question which the international prize court will have to decide whether—a question which under the circumstances and in view of the fact that we could not agree upon it when this Declaration was being negotiated I do not express any opinion upon—whether they have jurisdiction to decide this question. I will assume that the court has power to decide this question, and that it is called upon to decide it. I do not know upon what grounds it is thought

the court is going to decide against us. The court will consist of 15 eminent jurists. There is no rule of international law which says you can convert merchant ships into warships on the high seas. We say that that would be contrary to the practice of war. That has always been our contention, and we hold to that contention now. Certainly there would be a majority of the views of those at the conference in favour of that contention, but I do not place any reliance upon that point. Let me assume that the international prize court does decide against it. Take the last alternative—how are we any worse off? Assume that the court says that a merchantman was converted into a war vessel, and then sunk a neutral, and that it has not done anything wrong provided that it has complied with the other articles which deal with the destruction of neutrals. The mere fact of the conversion on the high seas of a merchantman into a warship does not give the right to a neutral to claim compensation if it is sunk. I assume that is decided against us. I ask the House and the noble lord to consider whether we are really any worse off. Is it suggested that the result of that determination of a claim for compensation by some neutral against a foreign belligerent is to determine the rights and regulate what is to happen between us as a belligerent and some other belligerent power?

Mr. ATHERLEY-JONES. Certainly.

SIR RUFUS ISAACS. I am astonished to hear my honourable and learned friend say "certainly."

Mr. ATHERLEY-JONES. You exclude diplomatic action by submitting yourself to an international tribunal.

SIR RUFUS ISAACS. If my honourable and learned friend will forgive me, that is not meeting the point I am putting. This is not a question of diplomatic action when at war. What my honourable and learned friend has said is just the kind of answer which has been given at various meetings. That does not touch the proposition I am dealing with. I am not now dealing with the claim of a neutral against a belligerent. I have passed from that point. This is a far more important aspect of the question. The House will remember that the proposition I am seeking to establish is that we gain as neutrals and we do not sacrifice our interests as belligerents under the Declaration of London. I have dealt already with our position as neutrals, and I am now dealing with our position as belligerents. In order to determine that question and see whether our position is affected, I want the House to consider how we are affected as belligerents at war with some foreign power if it turns out that that foreign power is converting merchantmen into warships on the high seas. We still refuse to recognise the right, we still refuse to deal with it as a proper proceeding under the rules of war, and we are

quite unaffected by anything that has taken place under the Declaration or under the regulations of the international prize court.

I am asserting that in regard to this practice there is no right to do it, and that it is against the rules of war. What course we shall take under those circumstances I can not say. All I am pointing out to the noble lord, who is very interested in this question, is that we keep the position open, and whatever it was before the Declaration it remains after the Declaration whether the Declaration is ratified or not. [Honourable members: "No."] I can not understand how honourable members can say "No" when it is common ground between us that the rights of the belligerents *inter se* are quite unaffected. That has been admitted again and again in this House by right honourable gentlemen opposite on the front bench and behind it. It is not contended that the rights of belligerents *inter se* are affected. The whole point of this argument is as to what the rights of a neutral are as against a belligerent. However much you may affect the right of the neutral you do not affect the rights of the belligerents *inter se*, and that is the point I am concerned with and which I am trying to establish. We have maintained our position in that respect, and we have given away nothing. If that is right in respect to this matter we really have nothing to fear from any criticism that may be directed against us, and all that is necessary is that the House should bear in mind that whatever decision may be come to by the international prize court it can not affect our rights as belligerents.

I wish to say a word now with reference to the position taken up by some honourable members on the other side of the House. We have been told that a majority of the shipowners are against this Declaration. I think after the speech we heard from the honourable member for Hexham (Mr. Holt) no one can say that. My honourable and learned friend referred to Liverpool, but I do not think he has followed the point I have been making. The honourable member for Hexham called attention to a number of well-known names, the heads of great firms of shipowners in this country, and said they were in favour of this Declaration. The honourable member for Hexham omitted to mention that he is at the head of one of the largest shipowning firms of the Empire. He is a supporter of this bill, and he has given the most valuable help to us in regard to this Declaration. A number of shipowners' associations have passed resolutions against this Declaration, and so have a number of chambers of commerce. I want to know what would have been the effect if every speech made at the meetings of the chambers of commerce and the shipowners' associations where these resolutions have been passed, had been prefaced by the two admissions made from the

other side of the House—one that the rights of belligerents *inter se* are unaffected by the Declaration, and the other that on balance we stand to gain as neutrals. I would like to know what the result would have been in that case? It is an easy matter in addressing these shipowners' associations and chambers of commerce to arouse their patriotism by telling them the country is in danger, and informing them that if this Declaration is passed away goes their security. It is very easy to get these resolutions passed if those who pass them do not know of those two very important facts to which I have just called attention. Under those circumstances it is easy to pass resolutions by large majorities. I say that there is a great responsibility upon those who choose to go round and make speeches to chambers of commerce and shipowners' associations without pointing out those two most salient facts. Speeches have been made all over the country, and I ask under these circumstances have the facts been fairly put from our point of view when you find nothing in those speeches asserting that our rights as belligerents *inter se* are quite unaffected by this Declaration?

MR. BONAR LAW. Who said that?

SIR RUFUS ISAACS. The right-honorable gentleman the member for Dover (Mr. Wyndham) said it. I have also pointed out that the honourable and learned member for the Exchange Division of Liverpool (Mr. Leslie Scott) who is himself an international lawyer of experience and reputation, said so in the plainest of terms. I am astonished that I should be challenged in regard to this point, because my right honourable friend the member for Dover was present when I made this assertion, and he did not for a moment contradict it. My right honourable friend may take it that if he will refer to his right honourable friend's speech he will see that he made this admission. The honourable and learned member for the Exchange Division of Liverpool went much further than the right honourable gentleman the member for Dover, because he stated in the very plainest terms that we gain advantages as neutrals by the Declaration. I do not want to go back to this subject. The point I am making is that it is most regrettable that these resolutions should have been passed without the two important propositions to which I have referred having been brought to the notice of the parties concerned. I see the right honourable gentleman the member for Dover is now present, and I will repeat what I said. I stated that the right honourable gentleman, as well as the honourable and learned member for the Exchange Division of Liverpool, admitted that this Declaration did not affect the rights of belligerents *inter se*.

MR. WYNDHAM. Hear, hear.

SIR RUFUS ISAACS. Let me say in conclusion what has happened. In answer to our invitation the powers responded, came to a confer-

ence, and we arrived at an agreement. We have done what Liverpool asked us to do in 1904, when the Government headed by the present leader of the opposition was in office. We have done what Lord Lansdowne said ought to be done after the Russo-Japanese War. We have defined contraband. We have made an attempt to arrive at a code with regard to it. We have given them the benefit of an agreed code by which they will know what their rights are. According to the views I have seen quoted a number of admirals, asserting that we are sacrificing belligerent rights under this Declaration. The noble lord, the member for Portsmouth I am sure may be taken as the spokesman of those admirals, and nothing can be added by any of them to what has already been said by the noble lord opposite. He voices their opinions and to a large extent he leads them; at any rate, I am quite sure he is to the fore. He has told us clearly what are his views. I do not want to go back upon the arguments we have had already, but I am quite certain I am not misrepresenting his views when I say his argument, and the argument of those who follow him, is all in favour of having a stronger navy, that is, more cruisers in order to protect our food supply in this country.

LORD CHARLES BERESFORD. Hear, hear.

SIR RUFUS ISAACS. That is the argument, but it does not touch the Declaration. It does not affect the position in the slightest degree. We have got again jurists of great position, and we have had Professor Holland quoted. Of course, I agree he is a jurist of eminence, but as against that we may quote many. I might quote, for example, Mr. Arthur Cohen, a man probably who holds as high a position as any lawyer in this country, whose impartiality and fairness in controversy will be recognized by all, who has given an immense amount of study to this question from the very start, who has not always taken the view we have taken, and who has not always agreed with the propositions we have put forward. He now sums up the pros and cons of the Declaration in favour of ratifying it. You have just in the same way Professor Westlake and Lord Lindley, whose views I have just quoted. I do claim the consideration of all that has been written and said upon the subject is to establish the proposition which I set out to prove in this debate, and which I claim I have established clearly, and that is that whilst gaining as neutrals we have sacrificed nothing as belligerents. We have maintained the national interests unimpaired, we have secured the great advantage of an international agreement upon which our people can rest their claims in the future whenever considerations arise upon which they have a right to compensation, and in that we have achieved a purpose which ought to make this House satisfied with the Declaration, and make it content to pass this international prize court or naval prize bill as it is known.

The bill, in effect, leads us to a further international agreement to the many conventions we have already made. It sacrifices nothing we ought to have upheld, and it in no way impairs our national interests or our national honour.

Mr. CAVE. We have listened to a speech of very great interest and of value to both sides in this controversy, because, while those who are in favour of the Declaration have the advantage of the powerful advocacy of the right honourable and learned gentleman, we also derive this advantage from his speech, that he has stated clearly, and I think accurately, the real points between those who take different sides and has so made it more easy for us to endeavour to reply to the arguments put forward in favour of the Declaration. I am glad of this. The learned Attorney-General has not himself used the argument, I think the illegitimate argument, which was put forward by the right honourable gentleman the Under-Secretary of State for Foreign Affairs (Mr. McKinnon Wood), and I think by one other speaker, that, because this is a Declaration of London and because we summoned the delegates of the powers to discuss this question and to come to a decision upon it, we are therefore under some kind of moral obligation to ratify the Declaration. I protest against that argument being put forward. We especially reserved the right to ratify or not ratify whatever agreement might be come to. We did not appoint, we could not appoint, our delegates, however distinguished, with the idea that their assent was binding on the nation as a whole, and we are perfectly free to ratify or not to ratify as upon full consideration our Government may think fit. That is recognised by our delegates themselves, because in their report to the Government they throw the burden upon the Government of deciding the question. They say—it is on page 103 of the Blue Book:

To what extent the rules themselves will safeguard the legitimate rights and interests of Great Britain and how far their claim to general validity and therefore to general respect is made good by their inherent justice, and by their conformity with the true law of nations * * * are questions which we must leave to the judgment of His Majesty's Government.

The Government have left it to some extent to the House, and the House is perfectly free to express an opinion. The right honourable gentleman said, and said quite accurately, that we are all of us in favour of some international code laying down rules with regard to questions of prizes and the rights of neutrals, and that we are all, or, at any rate, most of us in favour of an international court to interpret that code. Yes, but, of course, with the condition that we get a good code and a good court. I do not mean a code which is all our way, but a code fair to neutrals, and which does not impair any of our rights as belligerents. The question, therefore, is: "Have we got a good code

for neutrals, and have we got a code which does not hinder us if and when we come to be belligerents?" I want to take the question whether this is a good code for neutrals first, because I think it lies at the bottom of the problem. We are, of course, oftener neutrals, happily, than we are belligerents, and therefore we have a great interest as neutrals. But apart from that the right honourable gentleman said, and said with some truth I think, that if this is a good code for neutrals we are more likely as belligerents to get the assistance of neutrals in war. I do not think that a conclusive argument, but it is certainly one of some weight. We must therefore make up our minds whether neutrals gain or lose by this Declaration. I say, after having given the matter the best consideration I can, that for neutrals this is not a good code. It puts them in a worse position, a far worse position, than they are in now. In saying that, I quite know I am to some extent differing from what was said by my honourable and learned friend the member for the Exchange Division of Liverpool (Mr. Leslie Scott), who the other day gave, I think, a somewhat guarded opinion when he said that on the whole neutrals stood to gain by the Declaration. I set off against his statement the other night his letter in one of the papers to-day, in which he shows, I think, as clearly as anybody can show, some of the disadvantages which accrue to neutrals under this Declaration.

SIR RUFUS ISAACS. He repeats the statement.

Mr. CAVE. Yes, I know he repeats the statement, but I think he refutes himself. The question, however, is not what one or the other of us thinks, but what are the arguments put on the one side and on the other. Two advantages are put forward for neutrals under the Declaration. First, it is said you have got a free list; you have got certain things which can never be made contraband. Of course, a written free list has its advantages, but it depends a good deal on whether it contains anything which could or would in case of war become contraband. If there is nothing or little in it which could become contraband, then, although it has some value as a written document, yet it has very little practical value. We are rather too apt, in discussing this question, to assume, because a foreign power may say a thing is contraband, that therefore it will be contraband. It is not so. A thing can not be made contraband unless it is declared contraband by the belligerent power and the claim is accepted by the neutral power. After all, treating a thing as contraband is taking away property—goods and possibly the ship—of other nations with which you have no quarrel at all, and in order to establish that you must have the assent of that nation to the transaction as a whole. Neutral nations agree to form a kind of ring round the two parties who are at war and not to assist either by sending goods which will help them in their warlike operations. The mere fact

that one of the two nations says, "These goods assist my enemy in his operations," does not make those goods contraband. It is always a subject of controversy between neutrals and belligerent nations as to whether the neutrals will accept a declaration of contraband.

Taking this free list and putting aside resin and such small matters, on which we need not waste time, the only thing which in recent times has been attempted to be treated as contraband is cotton, and I think the case of cotton is very instructive. The only case occurred in the Russo-Japanese War, which is responsible for a great deal of this controversy. In 1904, Russia took a British ship, found on her a very small quantity of raw cotton, 36 bales, and condemned that cotton upon the somewhat flimsy pretext that cotton might be converted into guncotton. Of course, we protested at once, with the result that Russia never repeated the act throughout that war. This one seizure of 36 bales was the only case of seizure of cotton in that war. Therefore, so far from that being a case against us, I think it is a case for us. It is a case where we would not accept the treatment of cotton as contraband, and where Russia accepted our refusal. With that one exception—which I think is rather for us than against us, and the trifling exceptions I have mentioned, I think there is nothing in this free list which ever has been or could be treated as contraband. It is said that under this Declaration neutrals will always be sure of getting compensation where there is a breach of the law. That is put forward as a strong point. Are they quite sure it is so? I want to make two observations upon this matter. Of course, the rule relied upon is article 64, which says:

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessels or goods.

That does not mean unless it was a legal capture. The report of the committee says that is means unless in the opinion of the prize court there was some other reason why the vessel or goods should be captured. That is a wide mesh through which any nation might slip from the obligation to pay compensation. Let me add this. It is assumed that where a neutral shipowner claims compensation he will have the right to go to the international prize court as a matter of course. Again it is not so, and that flaw is pointed out in the report in the Blue Book. If honourable members will turn to page 65 they will see these words:

It should be observed that in the text no reference is made to the question whether the national tribunals are competent to adjudicate on a claim for compensation. In cases where proceedings are taken against the property captured, no doubt on this point can be entertained. * * * If, on the other hand, the action of the belligerent has been confined to the capture, it is the

law of the belligerent captor which decides whether there are tribunals competent to entertain a demand for compensation, and, if so, what are those tribunals. The international court has not, according to the convention of The Hague, any jurisdiction in such a case.

In other words, unless the captor chooses to take proceedings in its own court, the owner of a ship has no remedy at all. The remedy is only by appeal from a decision of the national prize court, and if the Government, presumably in fault, does not choose to proceed in its own national prize court there is no remedy whatever for the loss caused by capture to the owner of the ship. To tell shipowners that under this Declaration they have a right to compensation in the case of any breach of international law is to tell them what is not the fact, and, unwittingly no doubt, to obtain their assent to the Declaration by an inaccurate statement of its effect. That is the second advantage which is put forward as accruing to neutrals from the Declaration, and, in regard to both advantages, I think I may claim to have shown them to be of a somewhat shadowy nature.

Let me now put forward shortly the disadvantages—the points in which neutrals will be worse off under the Declaration than they are under our present laws. The first point is that under the Declaration conditional contraband will be more exposed to seizure than it is to-day. I do not think that anybody really denies that. The general principle of course is that contraband, in order to be contraband, must be on its way to assist the naval or military operations of the enemy. The question is whether that test can not be more easily satisfied under the Declaration than it is now. We have the present rule under the hand of the Government itself. It is to be found in the memorandum in the Blue Book put forward as representing the British view. It is put in this way:

There is a presumption that conditional contraband is on its way to assist in the operations of the enemy only if there is proof that its destination is for the naval or military forces of the enemy or for some place of naval or military equipment in the occupation of the enemy, or if there has been fraudulent concealment or spoliation of papers.

Therefore, it must be bound for the enemy's forces or for a place of naval or military equipment in order to be presumed to be destined for the enemy's forces. That is the present rule. The new rule extends that presumption, because it raises the same presumption of contraband in at least four additional events. The first is if the goods are bound not for the forces of the enemy, but for any civil department of the enemy. The second is if they are consigned to a trader who supplies articles of the same kind to the enemy. What great trader has not supplied such articles? The third is if they are consigned to a fortified place. What great port is not fortified in one way or another? The fourth is, if they are consigned

to any place serving as a base for the armed forces of the enemy. That question has been fully discussed, and I will only make one observation, arising out of what was said to-day by the right honourable and learned Attorney-General. He said that to construe that expression about the base as including almost any port in the Kingdom would be absurd. But one of my honourable friends, in a letter published in to-day's paper, has shown that that expression has already been so construed, and therefore it does not lie with the right honourable gentleman to say that the construction is not likely to be adopted. In all these four ways consequently, the area of conditional contraband is widened, and the risk of the seizure of conditional contraband is increased. I say that it is a real hardship on neutral owners that the risk of capture should be increased by this Declaration, and my honourable and learned friend was not wrong when he said that under this Declaration conditional contraband is placed on almost the same footing as absolute contraband.

I may point out further that under this declaration the consequences to neutrals of carrying contraband will be very much more serious than they now are, because a ship which carries contraband may be confiscated. I do not think that that has been mentioned before. It is not our rule now. We are against confiscation of a ship merely because she carries contraband. Our rule, which is set out in the Blue Book, is simply that any interest in the ship which belongs to the owner of contraband goods is liable to confiscation, but in the absence of something of that kind or of resistance or fraud a ship is restored to the owners without, however, any compensation being paid for the loss of trade. Thus a ship carrying contraband under our present rules generally remain the property of the owner, and can not be confiscated, but under the new rules proposed under this declaration a ship carrying contraband will be liable to confiscation if the contraband, reckoned by value, weight, volume, or freight, forms more than half the cargo of the vessel. It will rarely happen that one of the conditions thus set forth will not be satisfied, and, therefore, a neutral ship carrying contraband will now be commonly liable to confiscation.

But there is much more serious matter than that. For the first time for 200 years we are asked to admit that a ship which the enemy alleges to be subject to condemnation—a neutral ship—may be sunk without trial. I emphasize the words "without trial." She can not now be condemned without trial, as she must be taken into port and be tried and condemned there. But under this declaration she may be sunk without trial. Execution may come first and trial afterwards. That is a very serious matter. The learned Attorney-General referred to the case of the *Acteon* as one in point where a neutral ship had been sunk, but I find I was quite right in suggesting that it was

an enemy's ship and not a neutral ship. I believe the Foreign Secretary is quite right when he said that for 200 years we have maintained that neutral ships must not be sunk. The honourable member for the Tyneside Division of Northumberland (Mr. J. M. Robertson) said on Thursday that when our ships were sunk during the Russo-Japanese War we did not protest, and the honourable member for Hexham (Mr. Holt) rather taunted us because we did not go to war on that account. Surely the facts are quite plain. We protested, and our protest was successful. Of course, we do not go to war when the party to whom we protest adopts are views. May I remind the House of what happened in that war? The first case was that of the *Knight Commander*. It happened in 1904. The *Knight Commander* was a British ship which was carrying railway material. She was taken by a Russian war vessel and was sunk at sea. Lord Lansdowne protested at once very strongly, and my right honourable friend, the leader of the present opposition, made a statement in this House that that was a breach of the law which this nation could not, and would not, submit to. What happened? The Russian Government at once gave us very satisfactory assurances. They must have conveyed their instructions to their commanders because, for nearly a year, for at least 11 months from that date, no other case occurred of any of our ships being sunk by the Russians. On the 27th May in the next year, the fleet of Admiral Rozhdestvensky, the last hope of the Russians, was defeated, and it was only within two days after that, when the Russians were in great distress and their fleet was disorganised that the other instances occurred. On the 5th June, 1905, the British ship *St. Kilda* was sunk by a Russian cruiser, and another ship the *Ikhona*, was also seized by the Russians and sunk. Again Lord Lansdowne made an immediate and very strong protest. What happened? Count Lamsdorff at once told us that the assurances of Russia in the previous year held good, and that the thing which had been done was due to misunderstanding and disorganisation on the part of the Russian admiral and fleet. They paid compensation for the ships and, what is much more important, Russia actually ordered her two cruisers home to Russia, and authorised a British cruiser to carry the message to them. No stronger case can be brought forward of the acceptance by one power of our rule that no neutral ship must be sunk at sea, and yet, that being the state of things, our rule being accepted, you are now going to agree to the opposite rule and to ratify a Declaration which says that a neutral vessel may be destroyed if to take her into port would endanger the safety of the warship or the success of the operations in which she is engaged, conditions which we know may be very easily fulfilled in almost every case in which our vessels are seized by a foreign country. I know our delegates tried to get a better agreement and tried to have it laid down that the

mere fact that the captor, having captured a ship, could not spare a prize crew to take her to port should not be a sufficient ground for sinking. But that was opposed by the other nations, and that shows that the mere fact that the captor can not spare a prize crew will be treated by them as a sufficient reason for destroying the vessel.

The First Lord of the Admiralty gave an excuse for the rule by saying that she was the enemy's ship already, and why should the enemy not destroy her own ship? But she is not the enemy's ship. It is true that under this Declaration, you have made her liable to condemnation by the enemy, but she has never been condemned, and it is wrong to say that the enemy is only destroying their own vessel. May I say before I pass from that that I have not mentioned two other vessels the *Hipsang* and the *Oldhamia*, because I do not think that they come within the rule stated. The sinking of the *Hipsang* was, in my view, a mere act of piracy on the part of Russia. The Russian vessel fired at the *Hipsang* at sea when people were on board her and killed some of the people and afterwards sunk the ship. There was no more justification for that proceeding than there was for the sinking of the trawler in the North Sea. In the case of the *Oldhamia* it was not a case of the destruction of a prize, but of a wreck, and these are not really cases in which the rule applies. I want to refer to the quotation made by the learned Attorney-General to-day, which is put forward as some sort of consolation to us who have raised this question in this House. It was taken from the report of the delegates on page 98 of the Blue Book. They say:

The delegates representing those powers which have been most determined in vindicating the right to destroy neutral prizes declared that the combination of the rules now adopted respecting destruction and liability of the ship practically amounted in itself to a renunciation of the right in all but a few cases.

Of course they did. They wanted our delegates to accept these rules, and they told our delegates that in substance they had got all they wanted. But they were delegates who were vindicating the right to destroy ships, but not those who took the other point of view and objected to their destruction.

There is one other point to which I want to draw attention, and to which attention has not been drawn in this House, but I look upon it as a somewhat serious matter. Under article 47 it is proposed that—

Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war, even though there be no ground for the capture of the vessel.

Just let the House consider what that means. It means that if one of our British liners had on board officers or soldiers of either of the belligerent forces, not necessarily going to the war, but simply passengers on board that vessel, a foreign cruiser might stop her and

search her and make these men prisoners of war. I have read the memorandum, and I know, of course, that it is agreed in that memorandum, although not in the Declaration, that the mere fact that these men are liable to serve or have been summoned to serve in the foreign belligerent force, shall not be deemed to make them embodied in the force within the meaning of this article. That leaves open a great many cases, including the cases of the fugitive, the refugee, the soldier or officer going home on leave, or anyone who is going as an emissary in a perfectly peaceful matter. In all these cases under this Declaration if it stands the enemy's ship would be entitled to take these men and make them prisoners of war on their own cruiser. That is new to us, and I think it is a very serious thing for this country to accept. The Foreign Secretary said in his letter to the chambers of commerce that it was a new rule. There is no question, of course, about that, but he defended it on the ground that the alternative might be worse and that under the existing rules large passenger steamers flying a neutral flag might be taken into a prize court and there detained possibly for a long period merely because a few individuals forming part of their passengers, quite unsuspected by the owner or the captain of the vessel, might be members of the forces of the enemy. In other words, he said the alternative is capture of the vessel and the taking of her to a prize court because certain soldiers, unknown to the captain or owner, were on board. That, however, is an entire mistake. There is no right on the part of a belligerent cruiser to capture a vessel or to take her to port merely because she has on board certain members of the armed forces of the enemy whom the authorities of the ship do not know to be part of those armed forces. The British Government put forward a statement of our rules on this point and you will find them in this Blue Book on page 9. Our rule which is stated is this:

A vessel knowingly carrying persons in the naval or military service of the belligerent is liable to capture and condemnation, but this penalty would not necessarily be enforced where such persons were merely travelling in the ordinary way as private passengers at their own expense.

In other words, under our present rules you may not take men off a neutral ship unless the owner of the ship knows that they are soldiers in the enemy's force. And even then you may not always take them off, because they may be merely private passengers travelling at their own expense. But under this new rule officers and men travelling home on leave as passengers are liable to be taken off. To be quite fair to the members of the conference themselves they did not put forward the excuse which the Foreign Secretary gives. They gave quite a different reason which I should like to read to the House. You will find it in the report on page 55. The reason they give is this:

Individuals embodied in the armed military or naval forces of a belligerent may be on board a neutral merchant vessel when she is searched. If the vessel is subject to condemnation, the cruiser will capture her and take her to one of her own ports with the persons on board. Clearly the soldiers or sailors of the enemy State will not be set free, but will be treated as prisoners of war. Perhaps the case will not be one for the capture of the ship—for instance, because the master was unaware of the status of an individual who had come on board as an ordinary passenger. Must the soldier or soldiers on board the vessel be set free? That does not appear admissible. The belligerent cruiser can not be compelled to set free active enemies who are physically in her power, and are more dangerous than this or that contraband article.

I call that a monstrous doctrine. It means this, that because a cruiser has stopped a liner at sea, ordered a search and found on board active enemies she is entitled to hold what she has got and take these men prisoners. That doctrine would cover the case of the *Trent*. It is about 50 years since one of our ships, the *Trent*, was stopped by one of the warships belonging to the Northern States of America and she took off two emissaries of the Federal States. We not only protested but we were on the point of going to war with North America for that act, and if she had not given in at once there must have been trouble between this country and the Northern States. Yet you are proposing a Declaration, or at all events approving of that memorandum which I have just read which would authorise that very thing to be done. It is true that in that case the men were not soldiers but civilians, but surely the same rule which applies to civilians ought to be applied to soldiers who are not proceeding to the war, and I think it is unworthy of our position that we should agree to allow a foreign cruiser to take men in that position off our neutral ships. I should like to have heard what Lord Palmerston, who was concerned in the case of the *Trent*, would have said to these two articles in the Declaration.

I say it is a bad code for neutrals. It is a worse code for us as belligerents. I think that almost follows from the first proposition. If you adopt the Attorney-General's argument that by making the rules easier for neutrals you make it more likely that they will come to the aid of a belligerent, it will follow that if you make things more difficult for the neutrals it is less likely that they will come to our assistance in time of war. That point has been so much dealt with that although it is most important I do not want to argue it at length, but I do want to deal with two arguments of the First Lord of the Admiralty, whom I am sorry is not here. The right honorable gentleman says that only one-tenth of our food comes in neutral bottoms in time of peace, and there will be less in time of war. The figure of one-tenth has not been accepted, but I will assume for the moment that it is the true one, but why is it said that there will be less in time of war? That statement is supported by one naval

authority, but is rejected by others, and I can only deal with the argument which the First Lord put forward in favour of this proposition. What he said was that he could prove that we should have less neutral ships bringing food in time of war. He said that there is in the world only a certain amount of shipping, not more than enough for the trade of the world; that when we are at war our ships will not be able to carry the neutral trade because they will be liable to seizure; that neutral ships can take that traffic without risk, and therefore cheaper; that therefore neutral ships will engage in that trade, and therefore will not be able to bring goods to our shores. Let me use the argument, and see whether if applied in another way it will not lead to exactly the opposite conclusion. In time of war British ships bringing food to this country will be in great peril. They will be liable to capture at any moment by the enemy's cruisers. On the other hand, if food is only conditional contraband, under the present rule neutral ships can bring food to some ports in this country without great risk and without liability to capture. Therefore the neutral ships will do all the trade to this country. One argument is just as good as the other. They are the same premises applied to a different state of facts. But the real fact is this: The ship will go where the profit is to be made, and if it be true, as it is true, that carrying grain to this country in time of our need will be a profitable trade, neutral ships will engage in it, and we shall have, I believe, not fewer but more of such ships bringing the food that we want. That is the real test of it.

The other argument of the First Lord is this: He said, "What if neutral ships are liable to be sunk by the enemy when we are at war? That is a matter for the neutral ships to consider. Does it affect us as belligerents?" I could hardly believe my ears when I heard that argument. If a neutral ship bringing food is sunk the news gets abroad at once, and how many more such cargoes will start for this country? The moment we make it easier to sink food ships coming here, that moment we limit, perhaps stop, the carriage of food. There is only one other argument put forward on this point. The right honourable gentleman, like others when they are cornered, says, after all we must depend on our navy, and if our navy is defeated why need we discuss the question of the carriage of food. Surely history shows that a nation may have for the moment lost command of the sea and yet not be a beaten nation. It may happen, of course, that we shall not have command of the sea always and everywhere, but yet we may still be able to carry on the contest, and in that case, unless we get these neutral ships bringing our food supply, there is great danger of famine or panic.

As to the prize court, I agree entirely with the right honourable gentleman (Sir Robert Finlay). A court of 15 is an unwieldy court,

and a court in which the representative of Great Britain has only an equal voice with the representative in one year of Venezuela or Haiti, and in the second year of Mexico or Cuba, and in the third year of Uruguay or Costa Rica, is not a satisfactory court. I think no one has expressed himself satisfied with the court, and I think among the suggestions which were made at The Hague Conference were suggestions which would be far more readily accepted than this court could be. No one expects that this country will at once reject or repudiate the Declaration of London or The Hague Prize Convention. What I ask is that you shall not ratify either of these instruments until the Declaration of London and its possible effects have been further considered and, if need be, amended by a supplemental convention. There is a precedent strictly in point. The Hague Convention itself, though it was signed in 1907, has not yet been ratified. It has remained for four years unratified, and during that interval it has been amended by a supplemental convention. Why can not you consider whether you will not meet many of the points which have arisen by a declaration amending the Declaration of London? See what you might do. You must have some further instrument in order to do what is admitted to be necessary to define the meaning of article 34. You must have a further instrument to bring into the Declaration some of the terms of the memorandum. I hope you will not bring them all in, because that would create terrible confusion. You must therefore have an amending convention or something of the same kind, and you might well take the same opportunity for dealing with matters which admittedly you tried to get into the Declaration but which are not there, such matters, for instance, as the coasting trade or the test of nationality, matters which are still open, and without which you can not have the complete code which is required in order to guide the prize court. You might improve the court, and you might, I think, in the same connection consider whether, after all, there is not something in the objections which we have raised. You may not be right. It is just conceivable that we may be right on some points and you may be wrong. I earnestly hope, whatever the decision of the House may be to-night, that some further time will be taken and some further consideration given before you take the step, which, I believe to be in practice irrevocable, of ratifying this Declaration. A little delay can not do harm to this country. It can hurt no one. But if you persist in ratifying this Declaration as it stands you may, and I believe you will, have gravely imperilled the future welfare and safety of this country.

Mr. BALFOUR. I am sorry to have to ask the House to listen to me immediately after a most able speech on the same side of the question as that which I desire to present. The House will understand that my motive for intruding on them at the present moment is that

I may be able to give the right honourable gentleman (Sir Edward Grey) ample time at a convenient hour to deal with a question which is undoubtedly complex, and whose complexity will be proved, if by nothing else, by the great length and the very large number of speeches which have been so far addressed to the House on both sides. I can not hope to compress where others have failed, but I trust I shall be able to bring my remarks to a close at a time which will give every chance to the right honourable gentleman to deal with the questions which have been raised in debate, the importance of which may prove to transcend that even of the great questions which are now sundering men's minds and causing disquiet in many circles in the country, and if the House rashly to-day gives a vote against further consideration, for that is what it comes to, either they or their descendants may really find themselves face to face with a situation which, from a national and imperial point of view, will be a more dangerous day's work than any other single day's work which this House has in the immediate past, or is likely in the immediate future, to be concerned with. I do not propose to weigh authorities upon this much controverted issue. I do not propose to quote great jurists, or to deal with what has been said, or what might have been said, by naval experts. Indeed, I think the excursion of the First Lord of the Admiralty into this particular province of the controversy has been singularly unfortunate. He made an attack upon admirals who have served their country, and who were no longer on the active list, which I think would have come ill from any member of this House on whatever side he sat or whatever opinions he held. But when the First Lord of the Admiralty sets to work to belittle the opinion of the only eminent members of the naval profession who are able to speak, the only members who are unmuzzled, I think the right honourable gentleman forgot in the heat of controversy not only what ordinary propriety requires from members of the House, but what is profoundly incumbent upon him as a man who in this House is, or ought to be, the chief guardian of the reputation of the navy.

I do not think myself much is gained in this House by merely quoting authorities. I think we have to argue it out for ourselves, to satisfy ourselves after listening to the arguments on both sides, and to come to a conclusion in which authority, be it that of naval experts or of the great chambers of commerce, the representatives of the shipowners or of the other great authorities which have pronounced in the main almost unanimously against this Declaration, is for a moment set aside, and we should set ourselves to work to weigh with all the impartiality we can the great issues which are before us. My honourable and learned friend (Mr. Cave) treated this matter in a spirit which I desire to emulate. He showed extreme moderation in form as he always does, and as he always does, too, showed

great cogency in argument. He put points before us with a lucidity which left nothing to be desired, and there was one point at all events which he raised which to me was a new one, and on which I trust the right honourable gentleman will give us a specific answer when he rises to reply. We have got, I take it, to look at this matter from three points of view. We have to look at it from the point of view of the neutral as such, whether we be the neutral or others be the neutrals, we have to look at it from the point of view of belligerents and from the point of view of war when we are one of the belligerents, and last but not least, we have to look at it from the point of view of the great interests of international law, the comity of nations, the methods of warfare and the general bringing together of civilised communities. The first two of these three points, namely, the interests of the neutral and the interests of the belligerent can not in the main be separated. I listened with surprise to more than one minister, and more than one member, making statements to the effect that we on this side of the House, inasmuch as we concentrate our attention in the main on the effect which this Declaration will have on our interests as belligerents, practically admit, or are prepared to admit, that from the point of view of neutrals the Declaration is satisfactory. That is not our view in the least. We consider that in the main our interests as neutrals and as belligerents are closely and inseparably intertwined. You can not separate them, and most of the arguments or at all events, a large number of the arguments which have been used showed that this Declaration is inimical to us as belligerents, while at the same time it is also inimical to neutrals when we are belligerents. There are one or two points on which the questions may be separated, and on which we may consider the case of the neutral apart from the case of our being at war, and apart from our interests in neutrals in such circumstances as carriers of food-stuffs and raw materials and other goods.

What are these separable cases? The first I will mention is that, as a matter of fact, I am afraid this court which is to be provided, not indeed by the Declaration, but by an instrument for the purpose is not a court which will really give a remedy to an outraged neutral. In the first place it will be enormously expensive; in the second place it will come, it may be, after a long series of trials, in the courts of the belligerent nation, and it is only after the matter has been tried in perhaps three courts—I think Russia had three courts, she certainly had two courts—that it would come before the court of appeal in the last instance, and the court in the last instance can not deal with the costs of the lower courts. It can do nothing to remedy the wrong a neutral has been subjected to by having his goods improperly captured, and having been put to great expense in

the court of appeal it can do nothing to recoup him for the fact that he has lost the use of his vessel during what was probably the most profitable time for operations. He will be deprived of that, and will get no compensation for it, and if that be admitted, as my honorable and learned friend has pointed out for the first time, not only his condemned cargo is to be lost, but the ship itself is to be taken away without compensation to the neutral. I do not think that is a very satisfactory course or a very complete remedy by which neutrals may find that the consequences of capture will be removed. It is no such thing, and I think the honourable member for Hexham Division (Mr. Holt), who is a great Liverpool shipowner, seemed to think that diplomatic measures can do nothing and that a court of appeal can do anything. I think he is mistaken as to what diplomatic action has done and can do, and how little this court of appeal is likely to be able to do.

This brings me to a question raised by my honourable and learned friend. He asked whether there was any security in the declaration of London that the case of a neutral ever would come before this court of appeal. That is to say, this court of appeal only takes account of cases already dealt with in the courts of the belligerent. If a case is not brought before the court of a belligerent, how does it come before the court of appeal? That is the question which was put by my honorable and learned friend, and I do not think there is an answer forthcoming. If there is I hope the right honorable gentlemen opposite will give it. Take the case of a neutral ship which has been sunk under the provisions of the Declaration. The ship is sunk; it is never condemned, it is never brought before the prize court of a belligerent; it never comes up at all. Well, then, by what machinery is the international tribunal to be seized with the case on appeal when there has been no trial in the first instance? How can you appeal against a case which has never been heard? There may be a legal point in this which I myself am incompetent to deal with, but, as my learned friend put the question a few moments ago, I think I have made it clear, at all events, that an answer should be given to a question which goes to the very root of such utility as this international tribunal may have.

There is one point of view, and it is almost the only one, from which this international court and the whole machinery provided by the Declaration is going to be an enormous convenience to a neutral—not to neutral traders, and not, I think, to subjects, but to neutral Governments. There is no doubt that the Foreign Office and the chancelleries of the various neutral powers will be enormously relieved if they can throw upon this international tribunal all the responsibilities which under the existing state of things rest upon them to see to the best of their ability that justice is done to their subjects

and to other neutrals. I have personally gone through some of these very unpleasant experiences, and I quite sympathise with the enthusiasm of those members of the Foreign Office who think that, whatever else this convention may be, at all events it will relieve future Prime Ministers and Cabinets, as I know to my cost, of some of the most difficult, perplexing, and disagreeable subjects with which a Government can have to deal. Whether that relief of the responsibility of a Government is good for the country, whether freedom from the agitation of shipowners, whether the absence of anxious debates in this House, and whether relief from prolonged Cabinet discussions, and, worst of all, from the painful diplomatic correspondence which such subjects give rise to, are not paid for at far too great a price by all that is given up by this Declaration are points on which there may be differences of opinion, but all parties are agreed that this Declaration, from the point of view of the Foreign Office, is an unmixed blessing. These are the main points which touch the neutral question as distinct from the neutral and belligerent question—that is, from the double set of inseparable issues which are raised by the consideration of how this instrument is going to affect us as belligerents, and neutrals trading with us when we are belligerents. These are points which can not be kept apart, for I think you can not deal with the one without dealing with the other. I agree with what has been said, in one form or another, in most of the speeches on this question, namely, that that which is best for us as a belligerent is also best for neutrals when we are at war.

If that be for the moment admitted let me put on one side the argument which has been a good deal used by honorable gentlemen opposite, but which I venture to think on reflection they will regard as irrelevant. They say, "You who oppose the Declaration argue that the safety of neutrals trading with our country is of enormous value, because they carry raw materials and food supplies." But after all, how much food supply do they carry? And then we have the controversy as to the figures—whether it is 10 per cent or 30 per cent, or, as I think some figures show, something between 30 per cent and 40 per cent. I do not think that really this point is one we need discuss. Of course, if you have an omnipotent fleet, if no hostile cruiser can come along your trade routes, if every ship, carry what she may, is safe from hostile attacks, because you shall dominate the ocean, because no enemy's ship can safely appear, I quite agree that neither this Declaration nor any Declaration is likely to injure us as belligerents, and we may go to sleep comfortably in the conviction that, however severe may be the diplomatic defeat which the negotiators have suffered in London, the nation will not suffer materially, because the navy will have so overpowering a mastery of the trade routes.

I do not attach any value to that argument, and I think honorable gentlemen will agree with me that if the argument be true all the fine things that have been said about raw materials and the employment of the population may go by the board. I think it was the Under-Secretary for Foreign Affairs who made an eloquent and interesting oration in which he explained to us that the toiling artisan of this country was going to reap immense benefits by the fact that a certain number of articles which have never been practically treated as absolute contraband, or even as conditional contraband, were put on the free list, and that the Government of the day had saved us from the fate she otherwise foresaw, namely, that in the future and for the first time some nation would effectively interfere with the importation of cotton, wool, and other raw materials. I shall have something to say about that list directly, but all I now mention it for is for the purpose of showing that we may, in dealing with the effect on neutrals, dismiss it, because honorable gentlemen are obliged to admit, or, at all events, to claim that a great advantage is given by making these articles in neutral bottoms immune from capture.

If that argument has any value at all it shows that the effect on this island is of real importance in time of war. Of course, I do not deny that if our navy is so weak that our own ships carrying our own foodstuffs could be captured or sunk the effect would be disastrous in the highest degree. But all that is necessary for my argument is to say that the evil consequences would be greatly aggravated if, in addition to your own ships carrying foodstuffs, you were also subject to the loss of neutral ships carrying foodstuffs. That is all the argument amounts to on either side. I really can not understand how the negotiators of the treaty of London can have ever admitted into international law so grossly unfair a discrimination as the Declaration of London makes between foodstuffs going to an island like ours and foodstuffs going to a continental country. For it is not as if it was an admitted fact that the doctrine of continuous voyage was an obsolete doctrine, or that you need not consider the transshipment of goods through a neutral port. On the contrary, continuous voyage is maintained for absolute contraband. The importance of the doctrine is kept in view by the Declaration. If it is kept in view of the Declaration for absolute contraband, why is it not kept in view when dealing with conditional contraband? Why is it that every avenue of food supply to a continental country is safeguarded and made as easy and as cheap and as safe in time of war as it is now, and that we and we alone, or other island powers, are put in a position in which not only our security is compromised but in which we are in terms put in a lower and less favorable position than is given to all continental nations?

It is really vain to contend, as is contended in answer to that argument, either that you have no power to use this doctrine of continuous voyage in the food supplies of continental nations, which is one argument, or that the definition which turns food supply into contraband is so clear, so narrow, so rigid, that we in these islands may feel quite happy, and that unless the food is actually coming in to support British soldiers, to victual a British arsenal or fortress, or to make life possible in some port of equipment, the food of the people will not be touched at all. Neither of those arguments will hold water for a moment. Take first the argument about imported food supplies to a continental country. There are great continental countries which habitually import such corn as they require through neutral ports. They can not be touched under this Declaration. You may say that, after all, they import a small fraction of their supplies, and that that fraction will be very well supplied from friendly neighbors on the continent, and that the matter is of legal but not of practical importance. The whole trend of modern industry is to make the Western European nations more and more manufacturing countries, and therefore to make those zones in which the population is increasing more and more dependent upon overseas supplies. It is perfectly true that corn can come in, whatever you do, through these ports to continental nations. Will any human being deny that to give them absolute security under this treaty, to make it impossible for them to have any moments of anxiety, to make it unnecessary to raise either the insurance or the freights of the neutral bottoms carrying these supplies, is to give them an advantage absolutely and formally denied to us by the same instrument?

Let me turn now to the second portion of the argument—that which deals with our food supply as distinguished from the food supply of those continental nations which more and more may be requiring to bring corn from overseas to feed their growing manufacturing population. Let us concentrate our attention for a moment on this island. I am surprised that any man studying this question impartially can doubt that an enormous change for the worse is made in the law of nations by substituting formally in this document a view of what turns corn contraband of war for the definition which has hitherto guided British prize courts. The old practice and the old theory were that it was only when corn was actually being obviously imported for the use of soldiers or ports of equipment or the use of fortresses that then, and then only, you had any right to treat it as contraband. Even then, under the old British practice, it was not treated as contraband as you are going to treat it under the Declaration of London. The importer had to be paid and the ship was not confiscated or sunk. Now you confiscate the ship and its cargo, and you pay no compensation to anybody, or you sink the ship and you

pay no compensation to anybody. It is ludicrous to say that that will not seriously check the importation of food into this country in neutral bottoms. I do not think that on reflection anybody will say that. What they do say is that it can be done now, that all the evils that can be done under the Declaration can be done now if some foreign nation chooses to adopt a course of declaring food contraband. That is really what I regard as the central problem of the whole controversy. May I bring in with this increased hindrance, caused by the Declaration, to the importation of food in neutral bottoms, by declaring it contraband, the other great difficulty which this Declaration does not meet but aggravates, the difficulty due to merchant ships being allowed to commission at sea. I do think that the arguments used by the Government on this question are singularly inconclusive. They amount to this, that the power has been claimed and has been exercised and therefore we can not stop it. Some of them say that it would be difficult for the belligerents to exercise it.

I think the First Lord of the Admiralty in a rather bellicose vein said we should know how to deal with these ships commissioned in the ocean when we come across them. He did not tell us how he was going to deal with them. I am extremely anxious to know. Is it that they are to be regarded by the Government as privateering or as piracy? Are they going to treat, in other words, these ships when they meet them with a harsher measure than they mete out to the properly equipped cruiser belonging to the hostile belligerents? If they are going to treat them in the same way there is no penalty at all. If you meet an enemy's cruiser, if you are strong enough you take it, whether it is a converted merchantman, converted in mid-ocean, or whether it is one of the most orthodox of commissioned cruisers. I should like to ask the Government, who must have considered this point, whether they, having vehemently protested against this practice, propose to back their protest by meting out an altogether different measure to the illegally converted merchantman than they do to the merchantman legally converted or to the orthodox cruiser? What, in other words, did the First Lord of the Admiralty mean by saying he would know how to deal with them? There is another point I would like to ask him. I think it was he who talked about putting pressure upon neutrals which gave hospitality to these vessels. In other words his idea was that if one of these so-called merchantmen came out of their course and with no cargo to a neutral port, it would be the duty of the authorities in those neutral ports to say: "This is a very suspicious circumstance. Why are you on this course? Why have you left your natural course? Why have you not got a cargo? We suspect you have got a gun in the hold of your ship, and that you carry a commission in your pocket, and we must detain you until we find out really what you are."

Is that a possible procedure? By what right are you going to exercise this pressure on a neutral? They will tell you: "This is a matter which is not indeed contained in the Declaration of London, but it is a matter which can be dealt with under a tribunal set up at the same time as the Declaration of London." Perhaps the Secretary of State will answer this question. I have assumed, and I think rightly, that this court would take cognisance of a plea made by a neutral, if a ship was taken by one of these merchantmen commissioned illegally as we think, in mid-ocean. But is that certain? I think it was the Attorney-General who gave a long series of hypotheses of what might happen of which that was only one. He did not say what would happen. I confess my own view is that you could not resist the right of a neutral to go to the international tribunal and to say: "Our ship has been taken by a ship professing to be a cruiser which has no title to be a cruiser, because it is not commissioned in a port of the power which owns it." I do not believe that the international tribunal could refuse jurisdiction on the point. If it gave jurisdiction on the point, and if it gave it against, where would you be, and where would be all the First Lord of the Admiralty's bluff about meeting these things with different treatment? But what becomes of his statement that you could go to neutrals and say to them: "You have no right to harbour such and such a ship which calls herself a merchantman. She has not brought a cargo, she is out of her natural commercial course"?

The neutral will at once say that the international tribunal has decided that every belligerent has a right at any time to turn its merchant ship into a man-of-war on the high seas. This ship, therefore, until it has been commissioned, is a ship you can not interfere with. We agree with you that it is one to be commissioned, but it is not yet commissioned. Until it is commissioned, it is clearly not a ship of war; it can do nothing, and until it is a ship of war you can not detain it. The country to which the ship belongs has apparently an absolute right, under the international tribunal, to convert it into a ship of war upon the high seas. After that has happened, we shall refuse it hospitality except under conditions given to belligerent ships, but before that, whatever our views and suspicions may be, we are clearly precluded from treating as a man-of-war that which by international law is not yet a man-of-war, because it is not commissioned. I do not know what reply the First Lord of the Admiralty is going to give in that case. I do not believe there is a satisfactory reply. In order that we may judge of this, I hope the Secretary of State will tell us quite clearly whether he thinks this court will have any jurisdiction on a matter which has been left open. I do not believe that the Government have said a single word elucidat-

ing that all-important point. My own impression is that they will be obliged to allow the court to deal with it. They will have given the court no rules, as the court will be left to deal at large with the matter, which may be of importance to us according to those abstract principles of equity and justice, which, admirable in themselves, are but a very poor guidance to the court, unless it has some specific embodiment of equity and justice in the rules it has to administer and interpret.

If you really want to understand what is going to be the effect of the new rules about conditional contraband of war, combined with a total absence of rules about commissioning ships at sea, you must regard them as two provisions—if I may use so positive a word about that which refers in half its connotation to that which is negative—taken together, and see how enormously they imperil your food supply. By stretching the whole meaning of the expression “conditional contraband,” by making it impossible to assert with any confidence that any cargo whatever before coming to this country is not conditional contraband, by at the same time giving this enormous extension to the possibility of creating predatory cruisers, predatory privateers, you make it profitable, from a naval point of view, to create those cruisers, and you give them an enormous field to prey upon. The Attorney-General was perfectly right when he said that, after all, lawyers could not restrain captains of cruisers from doing what they thought good for their country. I do not know how far the zeal of captains of cruisers would carry them, but lawyers might tell them, at all events, to diminish any indiscreet zeal on their part. They have really not done that. I can not imagine anybody being embarrassed, not merely for a colourable, but a legitimate reason, about destroying a ship and its cargo if he thought fit. The definition is so ample and so wide that the nation which thought it profitable to turn merchantmen into predatory cruisers certainly would give its directions to its captains not to use undue exertions to make it convenient to bring the vessel into port. It never would become convenient to bring it into port. It would always interfere with the operation of war. I ask any gentleman opposite whether he does not agree with me in this: If he were a captain of one of those converted merchantmen, with a crew no bigger than is required to navigate his ship, would he ever find it convenient either to provide crews to take it into port or to tow it into port, or to get into port in any way possible? It would always interfere with military or naval operations.

Will the ingenuity of man suggest a contingency in which it would not be inconvenient and not interfere with the success of military operations? Of course all these ships would be sunk. Whether or

not, when they were sunk, there would be a remedy before the international tribunal, is to me a matter of the greatest doubt, and let me add, in some sense, not the most important consideration here. I should like the owners to get all the compensation they deserve; but they might be paid double for all they lost and yet we might be no better off than if compensation was wholly denied us. That brings me to the point I touched upon a little earlier in my speech. I think the central issue of the whole debate. The only argument that has been raised, and I think can be raised in mitigation of the evils of the Declaration of London, the only thing that has been urged, is that, bad as it may be, far as it may depart from the ideal of naval law, we have ourselves done so much to establish, it is at all events the best we can get, and we may as well submit. If we aim at a higher ideal than that embodied in the Declaration, the only result will be that the nation with which we are at war will ignore our maritime prize law, and will say its own cruisers are to be regulated solely by its maritime law, which may justify all the iniquities which the Declaration of London either sanctions or does not forbid. I profoundly dissent from that view. One of my complaints against the Government in all this matter is that they seem to suppose that the ultimate remedy given by an international court, possibly many years after the outrage has been committed, is going to do something at the time the outrage is committed to check its repetition. What you want, and the only thing of the least use, is that when a belligerent stretches its rights against neutrals there should be some immediate engine which can be put into operation to check the continuation of that policy. That, some day or other, the particular individuals injured may be partially recouped for a small fraction of their losses does not touch the issue, does not stop the repetition of the outrage, does not prevent it even from being carried out continuously.

Half a dozen ships are sunk. Certainly the owners may ultimately get compensation, but, in the meantime, that will not prevent another half dozen, and a third half dozen, from being sunk, and so forth, until the whole neutral commerce will be driven out of the trade. The only answer made to that is that there is no instrument now in existence which can produce an immediate effect in stopping these outrages, which, as I have pointed out, is the only thing you want. If you can not get immediate action, no action is any good for the nation, and not much good for the individual sufferer. The most imperfect instrument which is immediate is far better than the most perfect instrument—and this is far from being perfect—which is only going to do some kind of justice years hence. There is at this moment an instrument which can be set to work at once to prevent

the continuation of these ill-doings. I grant it is an imperfect instrument, but no human being can say it is a wholly ineffective instrument. Experience shows conclusively that it is an instrument of great efficiency. It consists of diplomatic pressure, and all that diplomatic pressure carries with it. Several gentlemen, I think, notably the member for the Tyneside Division (Mr. J. M. Robertson), take the view that the argument I have just used means saying that war declared by neutrals is the only remedy we suggest for stopping this kind of evil practice. That is not so. The honourable gentleman the member for Tyneside, who knows history well, must be perfectly aware that when two nations are at war they have a very strong interest in not giving just offense to weaker nations, which may in many ways, short of war, throw their weight into the scale of one or the other. The declaration of such procedure would be regarded as an unfriendly act, the statement that all ports belonging to the neutral would be closed to the belligerents, the vast gradation of diplomatic methods, the instruments which lie between doing nothing and going to war, all these are ignored by the honourable gentleman. It is these intermediate methods of remonstrance and pressure which, short of war, carry on the great work of international diplomacy.

Mr. BALFOUR. I am rather surprised at the question of the honourable gentleman. I thought if anything was notorious it was notorious that these methods were resorted to, and that they were successful. Successful in what? They were successful in preventing the recurrence of actions which we are strongly of opinion are contrary to the law of nations, and, in fact, they did not recur on any scale. I think the honourable gentleman was not in the House when my learned friend (Mr. Cave) gave a very succinct and clear account of what happened in the Russo-Japanese War, and he really did show what I thought was common knowledge, that the remonstrances addressed by this Government to the Government of Russia did not fall on deaf or unheeding ears, and that in practice there was either a total cessation or an enormous diminution of any practice of which we have any ground to complain.

Mr. J. M. ROBERTSON. The right honourable gentleman did say that in that case the Government had not thought it worth while to make the effective protest which apparently they might have made. It was on that statement that I proceeded.

Mr. BALFOUR. I think the honourable gentleman must be speaking under some misunderstanding. I well remember the dramatic transactions which occurred then. I do not know that much is gained by raking them up now, but I can assure him we felt very strongly as to certain views of our maritime law which the Russian Government declared not to be in accordance with their view. We did press very

strongly, and I am most happy to say there was a most practical *modus vivendi* between this country and Russia. The whole of history shows it. The idea that great neutrals are going to allow their ships to be sunk because of the principles embodied in the Declaration of London that they may be declared to be carrying contraband of war, that is not the case at present. It will be the case, and they will have to tolerate that if you pass the Declaration of London. My complaint against the Declaration of London is not that the prize court is a very inefficient method of compensating the private individual. My complaint against it is that it destroys the existing remedy which, with all its imperfections, is immediate and powerful, and, historically speaking, has so often proved effective. That is the greatest complaint of many which I have against the Declaration of London. I should like the Secretary of State, when he comes to reply, to state whether it is not the fact that if he were approached, as we were in the time of the Russo-Japanese War, by a deputation of Liverpool shipowners, and if they came to him as they came to us, whether he would not say, "this is a case which will be pronounced on by the international tribunal and to which you can appeal after your claim has been adjudicated on in the court of the belligerents." The Liverpool shipowners could take whatever comfort they could from that answer, and the right honourable gentleman would say to them, "so far as I am concerned, I, who have been one of the signatories of this country to the Declaration, that is my reply, and we can not in common decency make any remonstrance. The whole power is taken out of our hands. We must submit, and politely, until we hear in the first place what the belligerent courts are going to do and then what the court of appeal is going to do."

And then the right honourable gentleman would go on to say that he is quite sure all those courts intend to do justice, and that he trusts his friends from Liverpool would be satisfied with the compensation which two or three years hence they will obtain or may obtain. There, do let the House understand, is the real danger of this matter. You have absolutely precluded your Foreign Office in future from making any remonstrance whatever with regard to things as you did before the Declaration of London. It is the fashion now to say that such remonstrances are useless, and that no neutral power will go to war to protect the rights of its subjects. All those arguments ignore the way into which international negotiations are carried on. All those arguments ignore the teaching of history, and I believe among the many evils which this convention is doing us the greatest of them all is that it prevents for ever the Government of this country raising its voice on its own behalf or on behalf of other neutrals when what we conceive to be the proper and legitimate laws

of maritime warfare are outraged by some belligerent. Is it not clear that all the changes we have submitted to are changes in favour of the great military powers and against maritime powers? I do not think anybody can deny it.

The Secretary of State for Foreign Affairs (Sir Edward Grey) indicated dissent.

MR. BALFOUR. The right honourable gentleman will no doubt explain why, but it seems to me, I will not say in absolutely everything, but I do say that on the balance the whole trend of this arrangement is to give the military powers what they want for the purposes of war and to deprive us of what we want for the purposes of war. I would then ask a second question. Does the right honourable gentleman really think that what most untruly the Declaration states that it embodies the accepted law, does he really think that they are doing a service to mankind by making obligatory on practically all nations a law so far inferior as that to that for which we have always contended before? It is a paradox yet true that we, who in time past fought great maritime wars, who have been the paramount maritime power; that we, whose prize courts and whose jurists have in so large a measure settled what the maritime law should be, and we settled it, so far as we are concerned, on a basis incomparably fairer than which the Government now intend to embody on the bidding of these continental nations in future international law. Do you not suppose when other nations came to consider the sort of prize law we had established in our courts they would say: "England has been the power of the sea for all these generations and the law which England has established will be tyrannical law, and let us mitigate it in favour of the neutral?" Has that been done? They have done just the reverse. They found our law, established by a nation having overwhelming maritime supremacy, interpreted by its lawyers, so fair and so favourable to neutrals that they have sought to modify it in the direction of making it more harsh to neutral powers, and, unfortunately, they have found an ally in His Majesty's Government.

The method under which they have approached this great task of framing an international and accepted body of maritime laws is to say that every claim which has been sporadically made by this or that power in time of stress must be regarded as representing what that power would do effectively if war broke out. We have laid down laws as to the circumstances under which food becomes contraband. Those are to be stretched, and why? Because one or two nations announce, though they have never practically enforced, the doctrine that food might be made absolute contraband. They pride themselves on having prevented cotton and wool and other things from being made contraband of war, and so far as I can make out only because one nation, again ineffectively and for a very brief time, said

that cotton might be regarded as conditional contraband. So we have it whenever a nation made a claim at any time, and not because of what we thought legitimate, the Government say: "Oh, that is one of the dangers we run, we must give up something in order to mitigate this danger or we must, with a wry face, accept the inevitable." That is not the way the great growth of international law should be assisted. You must take not merely the claim occasionally made by this or that power, you must look at the actual history of maritime law, you must take that as the basis of future practice of mankind, you must take what mankind has done and not take what mankind has claimed and not done, and say that that is to be taken as the basis of all future negotiations. That is not the way under which we have proved ourselves, very often under great temptations, as not unworthy guardians of the rights of neutrals, even in times of stress and difficulty. That is not the way we should contribute to the future development of international law.

In this case we have been the victims, we have fallen the prey, of the negotiating skill of those great continental powers. One great continental power makes this great claim A, another claims B, and a third claims C, and on each claim we make concessions. Always we give up the better law and accept the worse law in order to go to something we regard as important. Arrangements so arrived at are, I believe, no solid foundation on which to build future international laws. I, therefore, would venture respectfully to ask the Government if it be true that neutrals gain but little by the establishment of this court, if it be true that they lose enormously by the extension of the definitions beyond what we have ever accepted of what constitutes contraband; whether they lose enormously by the fact that we leave open to be decided, mark you, by this tribunal, as to whether merchant ships are to be commissioned on the high sea, and whether they lose enormously by that, and whether, without going over the whole indictment, this instrument is not so contrived that our position as an island is for belligerent purposes made weaker and the continental position is for belligerent purposes made stronger. And whether, finally, these whole provisions of these laws are not a retrograde step, a step back in civilisation and the giving up of our better law and acceptance of worse law, instead of waiting until the matter could crystallise into some better form. I would ask the Government whether, in face of all those considerations, they think the claim we respectfully put forward is an excessive or unfounded one. All we ask is for further consideration. We do not ask that the Government should undo their handiwork. We do not ask that they should either insult the powers with whom they have been in conference or admit themselves that they have

been guilty of a gross error of judgment. All we ask is that that judgment should be suspended, and that they should refuse ratification until the instrument is subjected to total examination, and on which may, and indeed must, depend the future fighting forces of this country, and which at some critical moment of our history may turn the tide against us. This I do beg the right honourable gentleman, not to finally and wholly close the door on the inquiry we ask for, and to suspend in this case, as Governments have rightly suspended in many cases, the final act of ratification, which I do not believe can ever be reversed once it is undertaken, and which will permanently and for all time substitute an additional international law, which is worse for us as belligerents, worse for us as neutrals, and last and not least, is certainly worse than the law which we have for so many years considered to administer in our prize courts.

SIR EDWARD GREY. I am sure honourable members opposite will admit that whatever grievances they may have against the Declaration of London and the international prize court, that neither of these instruments were conceived or advocated by us, or had their origin, as far as we are concerned, in any party feeling. I have no reason to complain of the line and tone taken by the official leaders of the opposition, but I do endorse most entirely what my right honourable friend the Under-Secretary for Foreign Affairs (Mr. McKinnon Wood) said in his speech, to which the right honourable and learned member for Edinburgh University (Sir Robert Finlay) referred, not understanding exactly what he meant, that there has been not from honorable gentlemen opposite, but in the general opposition to the Declaration, a gross amount of misstatement and misrepresentation. Now the right honourable gentleman who has just spoken, and I think many people on the opposition side, have come rather late into the consideration of this question, and the result is, as to me it appeared, especially in the speech of the right honourable gentleman who has just sat down, that coming upon all the criticism that has been devoted to these things, which from some quarters has been marked by great misrepresentation and misstatement, their attention has become focussed and concentrated on what are not really the most important points, and the result of that, in a great instrument of this kind, which is full of points, many of them of a complicated nature, must be, if your perspective is wrong, and if you are attaching entirely false values to the different points of it in your speeches, you give an entirely false view of the real merits of the case. I bring no accusation against the intention of the right honourable gentleman, but that as a matter of fact, I believe unwittingly, is what he has done in his speech. I will give an instance of that and make my point good presently.

The right honourable gentleman dealt with a great number of points which I do not think were points of very great importance, and then he came to one which he said was the central point. That, I admit, is an interesting point. He remembers the one he called the central point; it was the point whether this Declaration made it more or less likely in the case of war that neutrals would be able to restrict the action of the belligerents by diplomatic action. That he put as the central point. It is an interesting point, and I will deal with it later on, not only in the abstract, but as to how we practically should be likely to be affected by it as neutrals in the event of war between other powers. The most important point, which was the deciding point, I think, as regards naval opinion in favour of this Declaration—because there were two naval delegates who signed the Declaration—the right honourable gentleman never mentioned at all. That the most important point of all is the effect the Declaration is likely to have on our rights of blockade when we are belligerents. It is, from the naval point of view, the most important central point of the whole matter. That was never mentioned by the right honourable gentleman.

MR. BALFOUR. Neither did the First Lord mention it.

SIR EDWARD GREY. It had been gone over by my right honourable friend the Under-Secretary just before that. Now another thing which introduces confusion in the matter is to do as the right honourable gentleman has been doing, and to try to dovetail into each other the effect upon neutrals and the effect upon belligerents. Take the broad point. What is the desire of the neutrals? It is that the action of the belligerents should be restricted as much as possible. What is the desire of the belligerent? That his action should be restricted as little as possible. How can anyone argue that our interests when we are neutrals and our interests when we are belligerents are necessarily, or even mainly, on all-fours, with each other? The right honourable gentleman dovetailed these two things together, and it had that effect; but in order to deal with it clearly I must separate these two points, because I want to get the true perspective.

I would ask anyone who has listened to this debate, and who has gathered from the speeches of honourable members opposite a sense of the value which they attach in their own minds to the points which they make, to note that they make ten or a dozen points, but we may judge that the point of greatest importance is that which occurs in their speeches most constantly, and from that standard the point of greatest importance in their minds is what is the effect of the Declaration of London likely to be on our food supply when we are belligerents, not as neutrals, but as belligerents? I believe if they could be convinced, or if they had been convinced, that that

point was safeguarded they would not have asked for a three days' debate. Does not that show that we have carefully to keep separate the question of neutrals and the question of belligerents. I am going to deal with the question of neutrals shortly, because I am convinced that so far as they are concerned, and so far as many people are concerned, if we could prove that should we be at war, we are not going to be exposed to new dangers from the Declaration of London, and that we gain certain advantages as belligerents, the case of the opposition against the Declaration must drop. As neutrals, I am convinced we gain. Take this question of the sinking of vessels which has been gone into to-night. What was our position when we came into office? The late Government had protested against the first sinking of the vessel. The honourable and learned member (Mr. Cave) says no more were sunk for some time, but there were I think about four sunk later in the year in spite of the protests by the late Government. What was the position in which we were left? I do not say they were wrong, I do not say they ought to have gone to war, I think they were right not to go to war. We were left with a claim for compensation for these sinkings which had occurred—one early in the war—and there was no remedy whatever except in the Russian prize courts. The feeling in my mind was such—my **first impression was that if we meant to protest effectively against the sinking of vessels we must be prepared in future to go to war to stop such sinking rather than be left in this position of appealing to the prize court.** On consideration, I reflected, they had not gone to war when they were in office. I think they had good reason; this country has always been reluctant to go to war, and the fact that particular merchant vessels were being interfered with, and their indignation at that being so, were really in their minds outweighed by the advantage of remaining at peace and doing a great trade.

MR. BALFOUR. Does the right honourable gentleman really deny that the remonstrances which were directed to the Russian Government by us had an enormous effect?

SIR EDWARD GREY. They did not stop the sinking; they protested against the first case, and I think there were four others afterwards. Take what has happened since, we have not got any compensation in these cases for the sinking.

MR. CAVE. Compensation was paid.

SIR EDWARD GREY. Not for the sinking, but because there had not been a sufficient case against contraband.

MR. CAVE. They paid for the ship.

SIR EDWARD GREY. I think it was on the ground that the ship had not sufficient contraband on board to be condemned. That is a small point.

Mr. BALFOUR. As this does affect what the late Government did when in office, may I just read an account of what Count Lamsdorf said in 1905—this was after the second sinking of ships:

Last year's assurances to the British Government still hold good. These assurances have been observed for nearly a year. The present case of the sinking of a ship was an isolated one, probably due to misunderstanding and the disorganisation of Russian naval forces in the Far East.

SIR EDWARD GREY. They paid no compensation for the sinking, and the prize court have not laid it down that they were wrong to sink them. If so, we should have got compensation in every case; it is precisely because they have upheld the principle of sinking that we have not got compensation. What has happened since? The Hague Conference took place. We found there that a majority, I think, of the great powers were against a rule prohibiting sinking. What was the effect of a matter like that being discussed at The Hague Conference, and your having found the great powers were at any rate, very strongly divided on the question? What was the effect of that likely to be in the future on belligerents? Of course, it was that the belligerent who found it to his own advantage, would say, "This is a question on which there is no international law, and we are entitled to it." When we came to the Declaration of London, the United States, which had supported us at The Hague Conference, itself put in as its own views that under restricted conditions sinking should be allowed. What was the use of trying to proceed further after that in securing an international law, or to try to get it accepted as a law that in no circumstances should sinking be allowed?

As neutrals we gain under the free list, the question of how much, you may argue from looking at the list, but when the late Government were in office, they were bombarded to give, at any rate, some free list by chambers of commerce, and they would be able now if they were in office and in the same situation, to give a much more satisfactory answer under the Declaration of London. Find fault as you like with the composition of the international prize court, the tendency of this country and nations generally will be more and more in these cases to let the case go at the moment and trust to redress at the prize courts. Surely we have much more chance before an international prize court, with the majority neutral, than we can have in the prize court of a belligerent who is the judge in his own court. The right honourable and learned gentleman the member for Edinburgh University said that on this international prize court we have only one judge in 15. No other power has more than one in 15. How many have we in the prize court of a belligerent? I do think it is a mistake to decry this tribunal, and especially what was said about the

minor powers. The right honourable and learned gentleman (Sir Robert Finlay) quoted the names of some of the minor powers, some of whom have no right to be represented at the prize court at all. With regard to these minor powers, in general. I think it ought to be borne in mind that in these prize courts the great powers have a majority over all the minor powers put together, and that in our arbitrations, I was going to say all, but I will not do so without looking through the list, in the Atlantic fisheries question, and the Savarkar case the other day, we have constantly desired to have recourse willingly to some representative or representatives of the minor powers on the board.

The right honourable gentleman opposite (Mr. Balfour) specially asked me to deal with the point made by the honourable and learned gentleman the member for the Kingston Division (Mr. Cave) that under the international prize court convention and the Declaration of London a neutral might not be able to secure a right of appeal to the international prize court. That was, I believe, the point. Even if it were true that a belligerent could prevent an appeal to the international prize court we should not be worse off than if no international prize court existed. But, as a matter of fact, the cases in which the belligerent might prevent an appeal to the international prize court by refusing to allow the matter to go before his own prize court, are limited to the particular class of case in which a neutral vessel has been captured, taken into port, and released by the action of the executive without the intervention of the prize court. The whole paragraph from which the honourable and learned gentleman quoted is limited to that particular case. If we have failed to secure a complete remedy for the case in which a vessel when captured is released with her cargo, and in which the action of the belligerent is confined to that particular case, it may be an imperfection, but it is very little to set against the fact that we have secured again, that where the cargo is condemned there shall be an appeal to a court which is not that of the belligerent. The right honourable gentleman opposite treated that point as if it applied to the whole question of appeal; it applies only to that very limited case in which in the nature of things the neutral has been comparatively favourably treated by the belligerents.

MR. CAVE. What if the neutral vessel be sunk and no proceedings taken in the matter?

SIR E. GREY. Clearly, if the neutral vessel has been sunk it is not one that has been captured, taken into port, and released.

MR. CAVE. I do not think the paragraph is confined to that.

SIR E. GREY. I think the honourable and learned member will see if he will look again at the paragraph, "if on the other hand the

action of the belligerent has been confined to the capture"—if he had sunk it, if he had condemned it, and if he had seized the cargo then his action would not have been confined to capture. That applies to a very limited number of cases indeed. Then you may urge this further point: "Yes, but may there not be indefinite delay?" I take this from the prize court convention, article 6:

If the national court—

That is to say the court of the belligerent—

fails to give final judgment within two years from the date of capture the case may be carried direct to the international court.

That is my answer on that point.

Now I come to the question as to how it will affect us as belligerents. Does it really increase the risk of interference with our food supplies when we are at war? It does not affect us as regards British vessels, because it does not touch the question of belligerents *inter se*. The enemy remains as free to deal with British ships as we are free to protect them. The treaty of Paris—and that is the treaty of 60 years ago, to which naval opinion really objects—did affect the rights of belligerents *inter se*. It did prevent them taking enemies' goods when found in neutral vessels. That has always been objected to by naval opinion. Mr. Gibson Bowles, who is a protagonist against us, has always opposed the treaty of Paris; but it was signed 60 years ago, and why? I believe what caused the Government of the day to sign it, though obviously it restricted our actions as belligerents, was that they felt they could not set themselves against the opinion of the civilised world, and it was futile for them to claim rights as belligerents which would bring upon them the interference of neutrals when we were at war. [Honourable members: "Hear, hear."] I understand the meaning of that cheer, but I can only deal with one point at the time. The point I make in regard to that is that if that consideration had to be taken into account 60 years ago, when you might have had to make concessions in order to avoid the risk of being interfered with or your action restricted, it is an argument which has not lost all force now.

As a matter of fact, my great point in favour of the Declaration of London, from the naval point of view, is that in regard to blockade—which is what we must care about—we have by the Declaration of London got an agreement which on that point diminishes the risk of interference of our action when we are belligerents, the prospect of which has become a very serious question unless an agreement had been come to pretty soon. If on some other point we have made concessions which might be inconvenient for us in time of war, they are far outweighed by the agreement we have secured with regard to blockade. The point was this: does the Declaration of

London increase the risk of interference with our food supply in time of war? I am not going for a moment to haggle about the percentage of food brought by neutral vessels now, or likely to be brought in time of war. I lay down the broad proposition that if we can keep the sea free for the British flag in time of war, we can keep it free for neutrals in time of war. If the British flag is driven from the sea we can not save ourselves from starvation by dependence upon neutrals. Even if the bulk of the food required could be brought under neutral flags, the rise in prices of freights would be prohibitive. Therefore, the question of starvation in time of war does not depend primarily on the neutral flag, and it would be most dangerous to suppose that we could depend upon the neutral flag. The efforts of the enemy will be devoted in the first place, not to attacking neutral vessels, but British vessels. If we have got command of the sea to that extent that we can deal with British vessels coming to this country, the question of neutrals is comparatively unimportant.

What will be the case without the Declaration of London, supposing it is not ratified? How shall we stand in regard to the prospects of interference with our food supplies? For a day and a half honourable members opposite laboured to prove that there was no risk of food being declared absolute contraband by our enemies if we were at war; that there was no risk of the food of our population, as distinct from the food of our armed forces, being interfered with so long as the Declaration of London was unratified. They quoted Professor Holland and Mr. Bryce. Supposing this debate had not been about the Declaration of London or the prize court convention at all? Supposing it had been a debate on the question as to whether or not we had sufficient cruisers to protect our food supply in time of war, and supposing the opposition were taking the line that we ought to have more cruisers, and we on the Government side had been arguing that we need not have more cruisers to protect our food supply in time of war, and we had quoted Mr. Bryce and others to show that there was under international law the right to interfere with the food supply of the population in time of war? Is it not certain that honourable gentlemen opposite would have quoted the action of France in 1885? They would have quoted Prince Bismarck's dictum, and they would, one and all, have said, as the member for Portsmouth said the other day, that both himself and his brother officers, if they saw 20 ships which had the enemy's food supply on board, and if they were to hang for it, they would put them down all the same. The noble lord opposite with that engaging frankness which reconciles us to listening to him, even when he most differs from us, and makes us doubly grateful to him when we agree with him, in that one sentence "blew out of the water"—I think that is the proper

expression—the whole structure which his party for a day and a half has been endeavouring to build.

My contention is this: that without the Declaration of London you revert to the risk, if at war, of food being absolute contraband, and you run a certain danger that your enemies will say food is contraband of war when destined for your armed forces, and we leave it to his naval captains to interpret when they think it is destined for armed forces. Under that they will do as the noble lord himself would do in their place, make out a case on every point that as that food was destined even to an ordinary port of this country they were not sure that it will not reach the enemy, and they must interfere with it. That is what would happen without the Declaration of London at the present time. If that is admitted by the other side I am content. If they do not admit it, I would ask them if we were to come forward with a proposal to reduce the number of cruisers to protect our food supplies, will they accept their own contention as a sufficient answer? The argument of the noble lord was—I could not see that he was attacking the Declaration of London at all—that he wanted more cruisers. If I had been setting up the Declaration against his demand as something so solid that it would take the place of cruisers, then I could have understood his animosity against it. But really the Declaration of London is not relevant to his argument at all, because we have never put it forward as something which we would rely upon, nor would I put forward any paper instrument as something upon which we would rely to preserve us from pressure being brought upon our food supplies in time of war; that is, rely upon it to such an extent as to enable us to dispense with the power of protecting that food supply ourselves.

Honourable members opposite contend that under article 34 of the Declaration of London the naval captains of belligerents will be able to do, and will do, exactly what I have been saying they would do without the Declaration of London. Even if that is true we are not worse off than before, and it will make it more and more difficult for them to put that wide interpretation upon food as contraband. The right honourable and learned gentleman the member for Edinburgh and St. Andrews Universities has told us that we ought to do that which he did not do himself. I do not mean he did not intend to do it; that you must take this Declaration of London as a whole, and consider it as a whole. Honourable members who have spoken, and he himself, speaking about article 34, have done anything but consider it as a whole. They have taken article 34 isolated from its context. I need not read it to the House again, but it gives discretion as to interference with food supplies and the presumption when they may be contraband of war and when not. You must read how that discre-

tion is to be interpreted; you must read that as part of the Declaration of London as a whole, and the Declaration of London as a whole says that food is never to be treated as all contraband. If a captain of a belligerent vessel is going to treat food going into a port such as Glasgow and Bristol as possibly destined for the armed forces in this country he is treating all food as contraband, and there is no port safe.

My point is he would certainly do it without the Declaration, but does the Declaration of London make it easier for him? You can not say that a declaration which lays it down that food is never to be treated as contraband makes it easier. A naval captain may drive a coach-and-four under stress of war through some provision and violate its clear intention. I do not put this forward in place of cruisers, but it is pressing argument unreasonably to say that if they violated the clear intention of the Declaration of London that you would be making it easier for them to do so when they certainly would have done it before if there was no Declaration. In the list of what may be absolute contraband food is not included. It is treating food as contraband to stop all food.

SIR ROBERT FINLAY. Article 24 says the presumption arises in certain cases. What is there to qualify that?

SIR EDWARD GREY. The presumption applies to the base of operations if every port is to be treated as a base of operation. Every Government knows perfectly well that the intention of the Declaration of London was to prevent all food being treated as contraband of war. Anybody who treats it as if it were all contraband of war would violate what all those who signed the Declaration held to be the clear intention of it; and although I am perfectly willing to make honourable gentlemen opposite a present of the point, if they like, that the Declaration fails to give a certainty of safeguard, and may not take the place of cruisers, my point is that to say it creates a danger which it may fail to prevent is an entire travesty of the whole thing. If you say it may fail to prevent and to actually safeguard, I may admit you a point, but to say it creates a danger because it does not remove it is saying something which is the reverse of the fact.

Take the case of freights in time of war; that is very important. How are freights likely to be affected by the Declaration of London? One element is the cost of insurance against capture, and it is a very important one. If the Declaration of London is ratified there will be three points in favour of the insurer that do not now exist. The underwriter will know that food can not be legally treated as absolute contraband. He will know that the doctrine of continuous voyage can not be lawfully applied, and he will know that if cargo is illegally seized he can take compensation from the captors in the international prize court. All these cases are to the good, but you say

he will not get his compensation from the international prize court for perhaps two years, and then the war may be over. How can that be any help while the war is going on? It will help his prospects of getting compensation, and it will affect the freight at the moment favourably, and must have a favourable and not unfavourable effect upon the conveyance of food to us in time of war.

I turn now for one moment to the question of the sinking of neutral vessels when we are belligerents. I take into account the question how impossible it was to get any agreement, and how the United States themselves put in an opinion that under proper conditions neutral prizes might be sunk. We might have maintained our opinion, but other people would have maintained theirs, and keeping it out of the convention altogether would have no effect whatever upon the probable course of events as far as other countries are concerned. The real difference has been if you look at it, and take Lord Stowell's judgment, you will find that Lord Stowell was dealing with *Acteon* as a neutral vessel. The real question will be not whether there is a right when you come to look into the past history, but whether there ought to be in all circumstances the right of compensation. It is a small matter while we are belligerents; as neutrals it is very important. What change does the Declaration of London make with regard to the right and intention of other people to sink neutral vessels when at war with us? Dealing with us as belligerents, the only change made is this: That our enemy, whoever it may be—one of those great powers—who contended and upheld at The Hague Conference and the conference in London that there ought to be a right to sink, will hold to that right still, and if it sinks neutrals coming to our shores, he will have subsequently to prove the emergency before a court, in which he has only one representative instead of a court composed entirely of his own people. You can not say that that makes things easier for him. He may, and probably will, take the risk of having to pay compensation when the case comes before the international court, but you have no reason to say it makes it easier for him.

I come now to what the right honourable gentleman asks me to deal with as the central point. The central point as I understand from him is this—I am applying it now to our case as belligerents. At present he says: "If we are belligerents and our enemy interferes with neutral vessels bringing food supplies to us, probably he would bring down the interference of the neutral upon him, and that will give us the advantage, but that if the Declaration and prize court convention are ratified, the neutral instead of interfering will remain passive and wait for the decision of the international prize court." That is a very interesting point, but the right honourable gentleman dealt with it in the abstract. I want to

deal with the practical aspect. If we are at war with a great continental power under what circumstances is the interference of a neutral maritime power likely to be of use to us? In one case only. There is only one great neutral power interested in the supply of food to this country with a fleet sufficient to interfere effectively if we were at war with a great continental power, and that is the United States. So you may put this point in the concrete instead of in the abstract, and say: "Does it or does it not diminish the probability that the United States, if Great Britain was at war with a continental power, would resort to forceable action to insist that American supply of food coming to this country should not be interfered with." That is the real point. It is a very interesting point, and we have no right to speculate upon what the action of the United States would be. It is for them to take their own view of the Declaration of London in this matter. What their view or policy may be it is for them to say. They did put in at the Declaration their opinion about sinking, and it did not differ from the agreement arrived at.

You have therefore no right to expect that they would, without the Declaration of London, have taken a more extreme line against sinking than if the Declaration of London passed. To say the effect of the international prize court, even if the continental powers interfered with our food supplies, and treated food supplies coming to mercantile ports as coming to a base of operation to the enemy so as to cut off in practice the entire commerce in food with the United States, to say that the United States will have no power to interfere and must remain passive, is to found your argument upon the assumption that the United States in time of war would be so anxious to prevent its trade in food with this country from being interfered with, that without this Declaration of London it would take action. Does anybody believe that that is really the case? I believe it to be the case that the United States will claim their commerce should not be unduly delayed. Does anybody believe if that is the case they would sign this Declaration if they thought that undue delay and interference was likely to be the probable effect of it? Of course, as a matter of fact, anybody who reads the article in regard to convoy, will see perfectly well that if the United States choose to send food supplies to this country under convoy it becomes the right of the captain not of a belligerent vessel, but the captain of the convoy to interpret article 34 of the Declaration of London, and if it is a question of our food supplies, if the United States did desire to preserve its commerce without interference, it has only to make use of the article under convoy in this Declaration to transfer entirely to itself and its own captain to determine how the Declaration should be interpreted. Articles 61 and 62 have been entirely

overlooked. It is a most important point. I want to carry this a little further. Suppose the Declaration of London is not ratified and that the prize court convention is not ratified owing to our having refused to ratify them ourselves. Then you must bear this in mind. The United States has not been a reluctant party to signing the Declaration of London or the prize court convention; had they been a reluctant party anxious to be free from it, the point I am going to make would not have the same force as I believe it has. They were not a reluctant party. They were an actively consenting party. They have taken considerable trouble to get a protocol and to ask other powers to agree to a protocol which would remove any technical objection to their being parties to the prize court convention. They have throughout taken a deep interest in the prompt establishment of an international prize court, which they always regarded as a much-needed institution, and their view with regard to it is that the acceptance of the Declaration of London is essential to the establishment and successful working of an international prize court. I should like to remove from the minds of honourable gentlemen opposite the very dangerous apprehension that the United States would regard the failure of the prize court convention and the Declaration of London with satisfaction or indifference, and if they entertain any such opinion or argument they are under a delusion. The right honourable gentleman opposite said we signed this Declaration of London and prize court convention at the bidding of the continental powers. Supposing the Declaration of London and the international prize court convention had failed, that it had never come into existence, that it would never be ratified because at the last moment we refuse to ratify it. What is the probable course of events? We are at war with a continental power. That continental power will know perfectly well that the United States and itself were agreed, under the Declaration of London, as to what the rules of maritime law would be. The probable consequence I can foresee is that in case of war between a great continental power and ourselves that continental power, knowing perfectly well the risk, and desiring to avoid the danger of any friction with the United States, the great maritime neutral interested in our food supply, would propose to the United States Government that they each of them, knowing what their views about international law should be, should agree at the outset of the the war that they would accept the rules of the Declaration of London as those which should regulate the relations between, and they would be prepared to refer to arbitration any question which arose between them with regard to it. You would be no better off in a case of that kind than if you had ratified the Declaration of London, and if it was owing to us that the Declaration had failed to be ratified, we should be worse off because we should not be entitled to

appeal to any of these articles in our favour. We must have all these articles which are objected to, agreed to between the continental belligerent and the United States, but it would not follow that the United States would concede to us or any neutral what we gain under the Declaration of London.

With regard to the right of blockade, I will deal with that most important point. Are we crippled in our action against a belligerent in time of war, or are we likely to be crippled? The ideal condition used to be that we should have no rules restricting our action in time of war, and for this reason. In the old days our naval power was good against the world. If we had a two-power standard then it was a world-power standard, and all that neutrals might do when we were at war was a matter of indifference to us. Then we could value the position that we should be bound by no rules but make all rules, and that was a very favourable position from a naval point of view. But the conditions have changed, and are changing. I put this point. Your two-power standard, your three-power standard, if you have it, is no longer going to be a world-power standard, and it is not going to be possible for any power to have a world-power standard. That has been the increasing tendency of the growth of fleets generally, and that has increased the risk that in time of war neutrals might interfere with our belligerent action. You do your best to destroy them. With what belligerent action? If they interfere with our action regarding contraband that is a comparatively small point, because we shall never bring a continental enemy to his knees by dealing with contraband alone. There is the question of where he gets his supplies. He makes his own munitions of war. He can get them overland, and always has been able to get his supplies overland. If we were to declare food absolute contraband we should not bring him to his knees. The effect of interfering with our action in respect of contraband in time of war is slight.

What is the particular weapon which we wish to retain unimpaired, and with which we wish neutrals not to interfere in time of war? It is blockade. I suppose our first object in maritime war is to sink the enemy's fleet. I put that beyond anything else. Supposing the enemy's fleet is in port, and we can not get at it. Next in importance comes the pressure upon the enemy by the right of blockade. As the world's fleets have been growing it has become more and more important to us, if we do not wish to be crippled when we are a belligerent, to be sure neutrals will not interfere with what we may regard as the essential and effective right of blockade. Now perhaps honourable members will begin to realise why our two naval delegates at the conference of London signed the report. It is quite a mistake to suppose that the delegates who signed this report were reluctant

parties to it. They recommended it for the approval of the Government, leaving to us the responsibility of finally deciding whether it should be adopted or not. They recommended the first paragraph for our approval. It was signed by Lord Desart. The first delegate only signed it, but it was signed with the unanimous consent and approval of all his colleagues.

Hitherto there has been divergent views as to blockade. The continental view would be that a definite line should be drawn and ships should only be stopped when crossing that line; and that a ship can not be interfered with unless she has previously been notified of the blockade. The continental theory of blockade requires that a vessel should have notification of the existence of a blockade endorsed upon her papers, and that the capture must only take place if the vessel crosses the imaginary line. The British system requires that a vessel should have knowledge of the blockade, either actual or presumed knowledge, if the vessel left a port at which the blockade had been notified. If we are not allowed to interfere with a vessel coming into the blockade or attempting to break blockade unless we had previously notified her, if we are to have an imaginary line, in these days it would be impossible under modern naval conditions to maintain your ships stationary on an imaginary line and not be allowed to interfere with vessels unless they venture to cross that particular line. Our view always has been that a blockade to be effective need not have an imaginary line, but that the vessel arrested for trying to break the blockade must come within the area of the operation of the ships. What we have got under the Declaration is an agreement that the right of blockade shall be an elastic and not a fixed right. We have got the condition which would have justified the case of every ship which has been brought before a British prize court for attempted breach of blockade, and we have got the conditions which in the opinion of the Admiralty were essential, which were agreed to by the other powers, and which were essential for the effective use of blockade. We have the two admiral delegates signing this:

It is a matter for congratulation that in respect to the important subject of blockade we have been able to secure the recognition of the principles on which you directed us to lay stress.

That is most important. What we have done under this Declaration is to avoid the risk when we are belligerents of having set up against us by one or more neutrals the hitherto maintained doctrine in case of blockade, which would make blockade under modern conditions useless for our purpose. That is the risk which has been steadily increasing with the growth of navies, and which will increase more and more in the future. The general growth of naval building makes that certain. It has become so more and more, and

it will be more so in the future. Does not that show how important it is that upon a question such as blockade, the second most important thing if we are at war next to the actual sinking or destruction of the enemy's warships, we should have something like international agreement. Without international agreement you will have the risk of having a most inconvenient doctrine set up against you. It was an increasing risk and it will increase more and more year by year.

I have heard naval opinion quoted against it. I have never seen any evidence of any of these admirals that has considered this increasing tendency—the increasing dependence of every belligerent in future upon the consent of neutrals, the certainty that as the fleets of the world grow and become more closely connected there will be a tendency to put more restriction upon belligerent action. I do not see any sign that any of these admirals are alive to that process which is going on or that they realise as the process goes on some international agreement is essential. Naval opinion has not dealt with that point, has not gone into the real question of the merits of what we shall gain, and when we are asked to appoint a commission of experts I say we have dealt with this question of blockade from the point of view of high policy. We could appoint a commission of experts who would report in 48 hours in favour of the Declaration and we could appoint a commission of experts who would report in 48 hours against it. We are not going to devolve our responsibilities upon a commission of that sort. I have been dealing with this question from the point of view of belligerents and from that point of view alone we would not devolve our responsibilities in regard to the Declaration upon any commission.

I would deal with one point upon which the right honourable gentleman opposite especially asked me to deal—the conversion of merchantmen on the high seas. I would have passed over that had it not been that he specially asked me to deal with it. As belligerents we are not affected. We do our best to destroy them now, we should do our best to destroy them then. Other nations claim a right and say that they intend to convert on the high seas. That is why there is not agreement. They stick to their opinion. We shall stick to ours. The right honourable gentleman asks whether we should treat converted vessels as privateers when we are at war. I do not know how far you facilitate your power by treating them as privateers, but whether you treat them as warships or privateers you do your best to destroy them. I do not quite appreciate the importance of the point.

Mr. BONAR LAW. They would not risk it.

SIR E. GREY. The right honourable gentleman opposite asked me that we should do. I hope while we are in office we shall not be engaged in war; I hope when we are succeeded in office our successors

will not be engaged in war; but I am not going to say anything, should that unfortunate contingency happen, which will bind the hands of the Admiralty either under this Government or under our successors, as to how they shall deal with merchant vessels converted into war vessels on the high seas, which we have always contended should not be done. The right honourable gentleman asked me a still further point. He said, "But the international prize court may give a decision legalising this, and it is when you are a belligerent that you will be affected by the decision of the international prize court that it is legal to convert on the high seas, because you will not, when a belligerent, be able to appeal to any neutral to stop these vessels in their ports. That was the particular question he put. I took down his words. He said: "You ask the neutral to stop one of these vessels in their ports." These vessels, by the way, are all known. They are a very limited number. They are fast merchant vessels prepared so that they can be converted readily. It is because they are all known it is not so important to belligerents as one might suppose. We shall always know what they are, and where they are. "But," the right honourable gentleman said, "We should not be able to appeal to the neutral. They would say 'it is not commissioned yet. Here it is. We know this is one of the vessels that can be converted. It is all ready. It has got guns, not mounted, but in the holds. There it is, prepared to be converted directly it is outside our territorial waters, but we can not stop it, because it is not commissioned yet.'" That was the statement of the right honourable gentleman. There was a convention at The Hague, which, I think, though I am not sure, has been ratified, respecting the rights and duties of neutral powers in maritime war, and article A of that convention said this:

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise or engage in hostile operations against a power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise or engage in hostile operations which has been adapted entirely or partly within the said jurisdiction.

If you take that convention, and, considering all these vessels which can be converted and used on the high seas are known—it is known how they are being constructed and it is known why it is they are liable to be converted—surely your right to appeal to a neutral power and the power of that neutral to interfere with that vessel which it is known is intended, and which is partly prepared, as they all are, to be converted directly it leaves its port, is not only observed, but the obligation on the neutral is positively enjoined by this convention to do what is right and prevent the vessel leaving its port.

That is the answer on that particular point. I see two intelligent grounds of opposition to the Declaration of London which I must discuss. One is, as Mr. Gibson Bowles has said, "We have no rules, we impose them, we make our own rules." The time is gone for that. If you press that, you are doing something which you will not be able to carry out. You will be increasing the risk, by failing to get an international agreement, of interference with belligerents, and, if you adopt that line—if, even now by declining to ratify the Declaration of London and the international prize court convention, you obstruct what is the real genuine desire, as we who have negotiated the matter know, of the other great powers to come to some agreement—you are going a step in the direction of making the world against you. I have never contended, and I have carefully abstained from contending, that the Declaration of London or the international prize court convention would enable us to reduce naval expenditure, but I do say if you defeat an international agreement of this kind which other nations are anxious to have because you wish to keep your hands free and impose your own rules on the world—if you will have no agreement with them unless you get your own way in everything, because you will make no concession—you will be increasing the tendency, not of one or two powers, but of several powers to enlarge their naval expenditure, and you will be adding to the risk that you will be interfered with in time of war by neutral powers.

Of course, we have not got every point we wanted, but we have got very important points, and on the large general question we have gone some way towards avoiding the risk of friction between neutrals and belligerents in time of war. Even with regard to the doctrine of continuous voyage—a power which was of very little use to us in practice whatever it was in theory, because you can not prove the destination of goods—we have avoided certain friction. When the right honourable gentleman was in office his Government stopped one German vessel, the *Bundersrath*, and one of the points raised was precisely about this doctrine of continuous voyage. The dislike to interference with a neutral in that case was such that not only was the vessel let go, but very heavy compensation was paid. I do not say that is the only element in that case, but at any rate it was one of the elements. In future, either we shall not interfere with a vessel when it has conditional contraband on board, on the doctrine of continuous voyage, or, if we interfere, the neutral power will not protest. That is something gained. Nobody could have been at The Hague Conference or could be cognizant of what went on at the conference in London which followed it without realising how keen the other powers were to have some international agreement on these points, not the continental powers merely, because the United States were

as desirous as they were. We shall be taking a great responsibility, we shall be putting the hands of the clock back if we defeat that desire for an agreement. I will say this: If there is anything in it which vitally endangers us, then even at the eleventh hour I am perfectly prepared to say that we ought to draw back. I hope I have proved to the satisfaction of this side of the House that under this where we do not gain we are making things worse than before, where we have not secured everything we have, at any rate, made some undesirable practices more difficult, and where we most wished to be assured we as belligerents have got an assurance we had not before.

I contend that, on the whole, looking at it from that point of view, we gain and do not lose under the Declaration of London and the international prize court. There is another point: that of being parties to an international agreement which other parties wish to have, and that serious responsibility which you will take if by individual action you defeat that agreement and destroy the prospect of arriving at it. Under nothing but the most imperious essential national danger involved in the Declaration of London ought we to take upon ourselves such a responsibility. If we refuse to ratify, our decision will be received with great disappointment. The Declaration of London will still remain, as regards other powers, in the knowledge of all as a sort of rule of international law they wish to have and desire among themselves, and I have little doubt if the emergency arises they will use that knowledge to set up between themselves an agreement for arbitration. We do not wish to be left outside this international agreement. I believe it is perfectly safe for us to come into it now. I admit if we were convinced our national danger was involved in it we would withdraw even now. Being convinced that no national danger is involved in it and that if national interests have to be taken into consideration, we gain rather than lose, we are not prepared to devolve upon any commission of experts the responsibility of saying whether we should adhere to it or not.

Mr. JAMES MASON. The right honourable gentleman made a statement which I must say seems to me to be a particularly interesting one. He said that under modern conditions no belligerent could neglect to carry neutrals with him. If one point more than another has been urged during the whole of these debates on that side of the House, it is that diplomatic pressure when we are a neutral is absolutely thrown on one side. Why other neutrals are able to make use of weapons which, when we are neutrals, we are unable to use against other belligerents I am wholly at a loss to understand. The right honourable gentleman made some remark about the position of the United States to which I should like in a moment to refer. Before doing so, I desire to point out that personally I am not at all averse

to making a treaty because I have to give something away. My experience in the ordinary business of life has taught me not only that you cannot make bargains without giving something up, but that very often it is an advantage to make a bargain even though you give up more than you apparently receive. Therefore, I approach this question with no prejudice on the ground that we are asked to give something up, but the giving up is dependent upon two conditions. The first is, that after you have made the bargain you are on the whole better off than you were before, and the second is that you give up nothing which is absolutely vital to you. I admit there are certainly gains aimed at, and I think in some cases obtained, by this proposed treaty. The international prize court in the abstract would be a distinct gain. The one which is there proposed is open to the objections which have been fully dealt with, and I do not propose going into them. Secondly, I admit anything in the shape of certainty is a gain providing you get certainty, and I very much doubt if you get certainty in this document; but it is very important you should not have the certainty of evil. To a man who is condemned to death the possibility of being reprieved is better than a certainty of being hanged.

I admit unreservedly that so far as it goes the free list is a distinct gain. I admit that is a gain and for what it is worth the list of absolute contraband is a gain, although it is obvious the articles included in that list are such as would always be included in absolute contraband and are, therefore, articles about which there would be a very little done. I have been very much inclined to agree with what the right honourable gentleman said that on the whole the changes proposed as regards blockade are a gain to our country. I have been a little bit affected by the jubilation which has apparently overcome the German press regarding the apparent advantages which they and other continental powers will gain by the changes in blockade. They say it is a matter of great importance to them that we should no longer, under these rules, retain the power of sealing up the North Sea. There is something to be gained by this Declaration; certain things are an advantage. But when we come to the sacrifices we are asked to make, what do we find? We find that sacrifices consist of arrangements which differentiate in incidence as between island and continental States, and, furthermore, are an advantage to military States having land frontiers. Thirdly, they are in favour of countries which produce a considerable amount of food supply. These are broad factors which embody the sacrifices we are asked to make; it is this differentiation which seems to be so little acknowledged by right honourable gentlemen opposite.

It has been urged by the right honourable gentleman who last spoke, and it was urged last week by the First Lord of the Admiralty

as a reason why we should ratify the Declaration that the United States approved of it. We have been told that the United States accept the Declaration and believe its provisions are right. We have been repeatedly told that it has the approval of the United States, but we are not told whether that approval was that of the United States Foreign Office or of the United States people which, as in this country, may be a very different thing. But let us for a moment admit that the United States approves of it; are not the conditions of the United States very different from those that obtain here? They are not an island power, they are a continental power. Furthermore, this Declaration, important as it may possibly be to them under present conditions, is not vital to them at all as it is to us. It is a vital question to us, but it is by no means vital to the United States. We were told the other night by the First Lord of the Admiralty that the United States were pressing us to ratify the Declaration. Why have not the United States ratified it during the last two years? The treaty has been open to ratification for an even longer period than that; I do not know whether I am justified in assuming that they are waiting to see if we are willing to ratify it. If that is the case, then their ratification depends entirely on ours. I maintain that whatever the reason may be, we have no right whatever to be influenced in the decision of an important matter like this—a matter which is of vast importance to the future of our history—we have no right whatever to be influenced by the opinion of pressure of any other nation in the world, and the more so when you have, even coming from the United States, the opinion of that great seaman (Admiral Mahan), that it would draw the teeth of the British dreadnaughts.

We will now come to other objections to the Declaration. There is a difference of opinion between members of the Government. I understand the argument of the First Lord of the Admiralty to be that the Declaration, as regards the import of food to this country in neutral vessels, is of comparatively small importance, because only one-tenth of our supply is, in time of peace, brought to this country in neutral ships. The Attorney-General did not appear to share the view that one-tenth was the maximum. According to him our policy is the attraction of food in neutral vessels, therefore I am inclined to think that 10 per cent can not be taken to be the limit of what may in time of war be attracted to this country in neutral ships. To my mind the idea that the neutral imports will be limited to 10 per cent in time of war will not hold water. It is admitted that belligerent ships will always be in greater danger than neutral ships, and, that being so, there will be a tendency to lay up a considerable number of belligerent ships to keep them out of danger, while at the same time the high freights offered by the belligerent, coupled with the

fact that the insurance on neutral ships will be less than that on our own ships, will tempt neutrals to bring food to this country, and that temptation will be increased as prices rise. Neutrals would be tempted to do this for the money they would make. History has shown that very large sums of money have been made by neutrals in carrying food to belligerent nations, and I have no doubt that the effect of this tendency would be that the 10 per cent now carried in neutral bottoms would increase enormously in time of war. If it is the fact that clauses 34 and 49 would endanger the position of the neutrals and increase the risks they have to run, that to a certain extent would act as a check.

The question of the interpretation of clause 34 is, of course, a very vital one for this House. The Attorney-General told us the other night that the great object we must have in view was to secure ourselves against the declaration of food as absolute contraband. Is it not more important than the securing of ourselves against the declaration of food as absolute contraband that we should secure ourselves against the treatment of food, though called conditional contraband, as if it were absolute contraband? The whole burden of our argument is, in fact, that the conditions imposed under clause 34 are such that food coming to us under those conditions will actually become equivalent to absolute contraband, although it is not called so. The Government absolutely deny that statement; I admit we may be wrong, but at the same time the Government may be in the wrong. Will any honourable gentleman in this House or outside say that the interpretation of clause 34 is so clear that there is absolutely no doubt about the matter at all? No one will do that, no one will deny, after hearing the arguments put forward by the Government and those advanced on this side of the House, that there is a very considerable amount of doubt as to what would be the actual effect in practice of clause 34. That is the whole case for our amendment. If there is any doubt whatever on a matter so absolutely vital to the existence of this island and to its welfare I say that is a good case for our amendment, and until the interpretation of clauses 34 and 49 has been thoroughly cleared up, we have no right to sign any document which will bind us in the way that this Declaration will do.

I come next to the question of the treatment of food as conditional contraband; it is urged from the other side that food under existing conditions may be made absolute contraband. Let me, for the sake of argument, assume that it is so. If food were made absolute contraband by our enemies, and that is a possibility, we are told, that the conditions would equally apply to both parties, and that what our enemy did we should do. But if you once abandon the doctrine of continuous voyage that will no longer remain. I admit the argument put forward by the Foreign Secretary that the application of

the doctrine of continuous voyage would seriously hurt our enemy, by the seizure of conditional contraband coming into neutral ports, but that is a condition that we may overcome; we may interfere in that trade and it would tend to deter neutrals engaging in the trade and continuing on the same terms. If you pass the Declaration of London, then I maintain a very different basis will apply. According to my reading of the clause, there is a very considerable chance of a foreign commander who meets a neutral vessel bringing food to this country, even if he runs the risk of compensation in the future, he will think he will be doing his country proper service in destroying the ship. If that is done on a large scale it is obvious that it may, under these conditions, become in practice equal to absolute contraband. But you are going to remove any possibility of our enemy being treated in the same way.

What is the position of a country like Germany? The natural ports of south Germany are always neutral ports, Antwerp and Rotterdam are two ports through which a vast amount of the imports of Germany go in time of peace. I am informed that out of a total import of 19,000,000 tons into Holland, 17,000,000 go into Germany, and clearly a very large proportion of the imports of Holland are actually passed on to Germany in normal times. Let it be noted that the greater part of the imports of German food are in south Germany; there are times in the year when north Germany is an exporter, but south Germany is most dependent on the importation of foreign food, and the communications north and south in that country are such that the balance could not easily be made in the country itself, so that it is cheaper to import into the south and to export from the north. That being so, the ordinary trade of Germany and the ordinary food supply of Germany coming in through neutral ports in time of peace would in no way be disturbed in time of war, if you have this Declaration ratified, whereas if it is not ratified at any rate there is always the possibility of our being able in such a war somewhat to interfere with that trade. Therefore I think I am justified in maintaining that whilst the effect of clause 34 would be equivalent to making food absolute contraband to us it would at the same time leave the food of continental powers as safe in war as in peace. I had an interview with a gentleman of very considerable experience in the corn trade (Mr. Paterson) who was at one time president of the London Corn Trade Association, and I am informed by him that the conditions laid down in clauses 34 and 35 are such that they would institute a complete change in the methods of the corn trade as it is now carried on. I understand that the ordinary corn trade is done in this way: Ships are sent across the Atlantic with corn not consigned to any particular person or to any particular port, but they are consigned to what is called a port of call, such as

Las Palmas and Gibraltar, and there the captain has orders telegraphed to him as to where he is to come and where he is to deliver his cargo. Very often that cargo has been sold while it has been on the sea, and it has perhaps changed hands more than once. But clauses 34 and 35 provide that the ship could carry papers assigning the name of the consignee and the port to which the vessel is going, and it is laid down that the ship's papers shall be proof of that.

It is obvious that in the case of ordinary trade as it is now carried on the ship can not carry papers which would satisfy the requirements of those two clauses. The Foreign Office, in reply to that point, said that the trade must change its methods, but it is not so easy to do so. That does not rest with the people in this country at all but upon the exporters in the other country, and it is hardly like that they will change their whole methods to meet the requirements of this Declaration unless they get something very considerable by doing it. Is it not more likely that rather than do that that they will systematically exclude our ports from their arrangements, and will tend more and more to send their ships to those countries which, under this very Declaration, can import safely from a neutral port. It will tend to make food dearer in this country and cheaper in those continental nations. There has been an argument put forward very frequently all through this discussion that the abandonment of the principle of continuous voyage is going to be in our favour; but I notice that we have not heard very much about it in the last few days. It has, however, been very much urged upon the people of this country that the change in the law is going to be to our advantage, because food can be sent across the Atlantic safely to neutral ports and then reshipped safely to this country. There never was a greater delusion than that. What ports are concerned? What ports are meant? It is obvious that it can only be the ports of Holland, Belgium and France. I do not know whether anyone who has followed what has recently taken place about the proposed fortifications in Holland would take that view. I do not know whether they would or not. But no one can suppose for a moment that in case of war between Germany and this country that ports of Antwerp or Rotterdam could be used for the reshipment of food to this country.

We are reduced to France and Belgium, but is it likely in a European war—in such a war as we contemplate France would be a neutral at all, and if she were a neutral how many harbours are there in France which could deal with our ships that carry grain across the Atlantic? Very few of them can take these ships in at all or have the appliances to handle them when they have taken them in, but even if they had the cost of transshipment would be very heavy and would increase the price of food, because it has to be borne in mind that diverting without discharge from a neutral port.

to this country would be a breach of the Declaration. But there is another more important point. These French harbours are already overworked. I am informed that quite recently ships have been lying outside Havre and Dunkirk for more than a month and have had to leave because they could not get discharged there. The fact is that these harbours are receiving so many ships and the facilities they have are so limited that the difficulties of their ordinary business are very great and another 30 or 40 ships a week would make it impossible that they could deal with the pressure at all. I only wish to say a few words about the sinking of neutral ships. It is put forward that the Declaration would not make very much difference because this right is claimed by many States. There is all the difference between a right being claimed by others and being admitted by us.

We all know that the Foreign Office in 1907 held very strong views that neutral ships if they could not be taken into port should be released, and I am rather surprised to find that the Foreign Office seems to have hardened and changed in regard to this opinion. On the 13th October the opinion of the Foreign Office was that the right to sink neutral ships had been claimed by several great powers, but three weeks later, on 4th November, I find that the sinking of neutral vessels having contraband on board has been asserted by most of the great powers. I wonder what would happen during three weeks to induce the Foreign Office to change their opinion that what had been in the beginning of that period claimed by several powers had at the end of it been asserted by most. The particular point I want to make clear is to raise again the question of why we are to assume that when we are neutral we are never to protest, no matter what damage is to be done, and when we are belligerents we are to be terrified at the protests which are going to be raised by other nations. We had a speech by the Lord Chancellor on the 9th March, 1910, in which he says:

Supposing we reject this Declaration; our enemy would destroy neutral prizes at discretion without any limitation at all, acting upon their own laws. But suppose that we are neutral and our merchant ships are destroyed. This actually happened as we know in the Russo-Japanese War. We were then put to the choice I have referred to, either of allowing the incident to pass uncompensated or to have recourse to war with Russia. Of course the late Government like sensible men never thought of making that a subject of a declaration of war. * * * When we are at war we shall then be a nation interfering with neutrals and liable to have pressure in the midst of our own great difficulties. What should we do? We should do what we did in the case of the *Bundesrath* during the South African war. We should give way even though the seizure were justified, in our opinion, by law, and would be justified under the Declaration which is now complained of. We should give way in order to avoid complication and difficulty even if we were right.

It is granted, of course, that this country would not think of going to war because one, two, three, four, or five ships were sunk,

but I maintain that if it was made a regular practice of by one of the belligerents to sink our ships or sink them on a considerable scale—I maintain that we, being a great country, even under a Radical Government—should, if need be, carry our protest a very great way. It can not be said that under no circumstances whatever the greatest sea power in the world would fear to protest, while the minor powers would be always ready to do so. I can not, therefore, see on what ground it is assumed that we are to be so terrorised by threats that we ourselves do not make and that we are never to use them ourselves. If that were so it is quite obvious that we are not going any longer to attempt to maintain the position of the greatest sea power in the world which we now hold. Two things only concern me. If the Declaration of London is ratified and holds good for 12 years, and they may be 12 fateful years for this country, no one feels absolutely certain of what will be the effect of these clauses upon our position. This uncertainty surely justifies the amendment which is now before the House. It has been the proud boast of this country for many years that foreign policy has been kept outside the arena of party politics. This is a question not only of foreign policy but of national defence, and I most seriously regret that the Government have seen fit to treat this as a matter of party policy and to insist upon making this a party question. It is no consolation to know that posterity will denounce what we are doing to-day. I would rather see the blunder prevented than the crime punished. This is not only a question of our food costing us more, it is not only a question of our navy costing us more to counterbalance the effects of this Declaration, but I believe that if ever we were engaged in a war in which the result is hanging in the balance this vicious instrument which we are now asked to ratify may be enough to turn the balance as between defeat and victory.

Mr. FRANCE.¹ I would not have intervened in the debate had I not been connected for some years with one or two firms engaged principally in the importation and distribution of foodstuffs in this country. I feel, therefore, although the surroundings may not be inspiring, that it is almost a duty that I should say something from that point of view. May I, in the first place, entirely confirm what was said by the Attorney-General in regard to the way in which this matter has been put before the chambers of commerce in this country. I am speaking from personal experience on that point. If speeches such as that to which we have just listened, which I recognise as being one of great fairness and frankness, had been delivered to the chambers of commerce throughout the country instead of speeches which eliminated altogether the points in favour of the Declaration,

¹ Liberal.

and which were made principally by one late member of the House, who openly avowed that he does not believe in any sort of agreement with foreign powers in these matters, I am sure the opposition would not have been able to say that the business community of this country was against the Declaration of London. There appear to me to be two characteristics about the debate to which we have just listened and the general campaign against the Declaration. In the first place, it began with great virulence. One remarkable feature of it was that the first rule of the speakers was to assume that the whole Declaration was bad and to attack it violently. In fact, the language used seemed to argue the belief that those engaged on behalf of this country in the discussions at the conference were either traitors or lunatics. I am glad to recognise that that language has diminished in force in this House, as it generally does, and we have had speeches which have recognised good points in favour of the Declaration. May I comment upon one remark made by the last speaker, which astonished me? He used the argument, with regard to the doctrine of continuous voyage, that the neutral ports of Holland, Belgium, and France would be of no use to this country for transshipment. I venture to doubt that assertion to begin with. But the reason he gave was apparently that they would be no longer neutral, that Germany would interfere in some way in regard to the Dutch ports, and that the French ports would not be neutral, because France would be engaged in the war, and he proceeded to assume that all these ports would still be available for the continental nations. Consequently there was no force whatever in his argument on that point.

In the first place, those who opposed the Declaration began by saying it was all bad. Now they begin to admit certain things in its favour, but as soon as they admit them they begin to discount them and say that although there are certain things in its favour as a matter of fact they are not of very much good. The second rule of speakers, which should be embodied in one of those beautiful speakers' handbooks of which we have heard something lately, is to represent one or two points which Great Britain tried to obtain, but could hardly be expected to obtain, as being above everything essential to the continuance of the Empire. May I analyse the opposition in that light? First of all in regard to the position of neutrals. I thought until the speech of the honourable and learned gentleman (Mr. Cave) that it had been admitted that as neutrals we gained under the Declaration of London. I believe the last speaker to a great extent conceded that position. The honourable and learned gentleman controverted that on two grounds. One was dealt with very effectively by the Foreign Secretary. The other point which he did not touch upon was this. The honourable and learned gentleman said that the

free list was not of very much value to this country because it contained articles which would probably be on the free list in any case and which could not be turned into contraband except with the assent of the neutral power. A more extraordinary doctrine than that to come from the same bench upon which sits the noble and gallant lord (Lord Charles Beresford), who has himself declared that in time of war he and his gallant and faithful colleagues would be rather like roaring lions going about seeking who they might devour, could not have been made. Surely it is not possible to obtain a neutral's assent at the time to the conversion of any article into contraband. The whole matter would come up for decision afterwards—the very point which is urged against the Declaration itself.

Then there is the question of blockade. It has been said, and I think now conclusively proved, and admitted by the last speaker, that under the Declaration we gain with regard to blockade. The leader of the opposition made a speech in the city in which he controverted this but gave no argument to support his theory. The honourable member (Mr. Eyres-Monsell) has written a pamphlet in which he admits, as many speakers have done, that the rules of blockade have been made more definite, and that from the point of view of the Admiralty we have gained considerably. But if anything was wanted to enforce that view may I quote the words of the honourable and learned gentleman the member for Walton, speaking in this House in 1908 on the subject of immunity of private property at sea:

What is commercial blockade? It is comparatively a new doctrine of very doubtful legality and one in regard to which I venture to say, as far as this country is concerned, there is the gravest doubt whether, if we were engaged to-morrow in a large war, the great countries of the world would recognise it.

That uncertainty has disappeared under the Declaration of London. The great countries of the world have recognised the position as laid down, which is admitted by many to be of great advantage to this country. Then, with regard to the international prize court, it is said to be very good in theory, very good in its way, but it is not formed exactly on British lines. The question I should like to ask honourable members opposite is, do they wish not only to refuse to ratify the Declaration of London but also to refuse to ratify the convention of The Hague, which set up and constituted that prize court? If they begin at this stage, four years after The Hague Conference, to pull to pieces and to criticise the decision of that peace conference, they are on rather difficult and delicate ground. The peace conference set up and constituted the prize court, and left matters in a particularly unsatisfactory state, in the state that where

there was no rule, no treaty, and no international law, decisions were to be arrived at, I think the words are, "on principles of equity and justice." I ask honourable members if business men and the business community could be as satisfied with anything as vague as that as with a document which, though not perfect, at any rate contains a great deal that is definite and a great deal that is in advance of the existing position. There is also the question of the free list. Raw material of great importance does come in under that free list. The proportion of neutral vessels may be small. I notice it is always very small when the free list is spoken of, and has a tendency to increase in size when food is spoken of. But there is no doubt whatever that, although there may be differences of opinion as to what should be on the free list and what might be declared to be contraband in time of war, there are always great risks to industry as affecting neutrals, and the decision that this list can not without a serious breach of international law be touched is of itself a great step in advance.

I should like to refer to the attitude of the opposition in regard to the colonies, not the opposition in this House, though it is a remarkable fact that the opposition which twits this side of the House with acting under party pressure acts with a unanimity such as we are quite accustomed to in this House. There appear to be no free lances on the other side or any who have even opinions of their own against that declared by the leader of the opposition. When it was thought that the colonies might object to the Declaration of London their view was one of inestimable value. We must not proceed without having heard their version. Now they have approved and we were told in the House the other night by the right honourable gentleman (Sir R. Finlay) that it would be monstrous if we should be influenced by the decision of the dominions across the sea with regard to this question of the Declaration of London. I have given a list of points all in favour of the Declaration of London. They are admitted by many, even of those who oppose it, as being in its favour.

MR. HUNT. The colonial ministers gave as a reason for not going on with their opposition to the Declaration that the Foreign Secretary said the thing was settled and finished, and that nothing more was to be done.

MR. FRANCE. I beg the honourable gentleman's pardon. I read carefully through the whole of the *précis* of the imperial conference on this point only this morning, and although one representative at the conference took that view, at least two spoke emphatically on behalf of their Governments in support of the Declaration of London. I am only urging that at one time what they thought was regarded as a matter of the greatest importance, and that now those

who used that argument regard what they think as a matter of insignificance which can no longer be used in discussing the Declaration. Then the Government has been taxed with not having secured certain advantages. There is the point with reference to the conversion of merchantmen at sea. The leader of the opposition, who spoke in the city a few days ago in stronger terms than he used to-day, drew a lurid picture of a merchantman suddenly appearing from nowhere, sinking neutrals right and left, and continuing to do so throughout the course of the war. As was pointed out by the honourable member for the Hexham Division (Mr. Holt), such a state of things is ludicrous in the extreme. It has been pointed out over and over again that the rules for converting merchantmen are laid down not only in the convention read to the House, but in another convention. The rules laid down are so strict that it is idle for the right honourable gentleman to draw such a picture to alarm those who have not studied these matters quite so closely as others have done.

As to the question of food supply—it is alleged that under the Declaration some new inducement is held out to foreign shippers to send goods to our enemy rather than to ourselves, and at the same time that a new inducement is held out to belligerent commanders to destroy our food supply. I think both these suggestions are rather wide of the mark. It seems to me that the considerations which govern food supplies are two. In the first place, the shipper of food is likely to send it to the country that wants it most, that will pay well for it, and will make arrangements so far as possible in time of war for its safe arrival. Secondly, he would choose to send food to the country with the strongest navy, because in the matter of supplying food in neutral bottoms the neutral shipper must consider whether the neutral ship is going to run a fair chance of getting through, without any declaration, and relying on the strength of the navy of the power to which he is sending the food. Having in view these two main considerations, I believe that we shall be very much in this position as regards food. Without the Declaration it appears to me the position resolves itself into this. It is admitted that food has been, and may again be, declared absolute contraband. It might be suspected of being intended for the troops of the enemy, it might be captured, and the vessel might be sunk. Without the Declaration there is no certainty on any of these points. If the worst happens, the cargo is either captured or destroyed, and a claim in the prize court is the only method by which the shipper can seek redress, and there is no appeal from that court. Under the Declaration food can not be absolute contraband. That may or may not be a great advantage. I think it is some advantage. There has been some doubt as to what constitutes conditional contraband. There is an effort made

in articles 33 and 34 to define what is meant by conditional contraband. The definition may not satisfy everybody. I think no words can be found to satisfy everybody, but a further definition is made of what constitutes conditional contraband. Should a cargo be either destroyed or captured, then the appeal does not lie only to the enemy's court in the country against which the shipper has a grievance. There will be an appeal to an international tribunal, the great majority of whose members are neutral. The Hague Conference set up the international arbitration board, which the honourable and learned member for Edinburgh University (Sir R. Finlay) praised. The international tribunal now proposed to be set up will consist of eminent jurists, the majority of which will be neutrals. The same considerations I believe would help to influence the foreign shipper in choosing to send food to England, in addition to the fact that he would do so because England has the strongest navy. This would also influence commanders who might be disposed to take great liberty with ships carrying what they believe to be contraband. They would bear in mind the strength of our navy. I should have liked to ask the Foreign Secretary to repeat in this House certain assurances which he formally gave. The first one is that the expression "enemy" should be clearly understood to apply to an enemy Government. Personally I should have liked him to make the ratification of the Declaration conditional on that. I should have liked also the official adoption by all the signatories of M. Renault's report. I should have liked also a clear reservation of our position and rights on the question of the conversion of merchantmen on the high seas. For the reasons I have given I heartily support this bill and the Declaration of London which is attached to it, believing that delay in the ratification at this stage would be not only a national but an international blunder, which might involve this country in consequences which would be almost irretrievable.

Mr. GERSHOM STEWART. I intervene in this debate as one who was resident in that part of the world where the episode actually took place which called this Declaration into being. I feel sure I express the opinion of every Englishman east of Suez when I say that they will hear with astonishment and profound disappointment that our Government are prepared to sign a Declaration placing the sinking of neutral British ships at the discretion of any foreign commander.¹ What we have looked upon in the past as regrettable incidents we must now, I suppose, have to accept as the ordinary course of things in time of war. The honourable member who has just sat down seemed to me to share with us certain doubt about the real virtue

¹ Mr. Stewart was engaged in business in Hong Kong from 1882-1906 and took an active part in the public affairs of the colony.

of this Declaration, because even he seemed to think that conditions were required, and that we ought to have certain alterations made in it before ratification.

Mr. FRANCE. I simply asked that in ratifying, our Foreign Secretary should repeat one of the statements which he has already made with regard to the Declaration, and that he should make two further conditions which he has already announced in other places.

Mr. STEWART. But article 65 in the Declaration says that the whole or nothing must be accepted; you can not make certain emendations. It is because I wish to see certain emendations made that I support the motion for delay. The honourable member seemed to assume that some members on this side of the House say that we have got advantage from this Declaration, while some say we have not. Does not that show that we are approaching the matter in a non-party spirit? I listened to the speech of the Foreign Secretary with very great interest, and he said that this question was one which should be approached in a non-party spirit. I wish that the Government would back them up in that position. One short week ago, in a moment of universal rejoicing, we forgot all party differences; now, when we are considering a matter of common absolute danger to the whole community, we should do the same thing, because assuredly if and when this Declaration becomes operative, the whole of this country, Tory or Liberal, will have to sink or swim together. The Foreign Secretary said that the crux of the whole contention was the question of our food supply in time of war. He proceeded to give us very cold comfort on that point by saying that the Declaration did nothing to help us in time of trouble. He then proceeded to censure the justice to be obtained in foreign law courts, and it rather seemed to me that if you get little justice in individual cases, when we are dealing with them in large numbers, you can not hope for very much from the international court. Reference was made to the action of Russia in the late war in a manner which seemed to imply that we did something that we should not have done in accepting what they did. But Russia at the end of the war sank our ships to try to embroil us. They were so annoyed with the help which we had given the Japanese that the few commanders left them acted almost as distracted people. Fortunately this country was not drawn into that contention, and was supported in the course which it took by honourable gentlemen opposite.

The Foreign Secretary proceeded to say that he could not speculate on what the United States would do, and immediately he proceeded to do so. It seemed to me that he proved that the whole success of this Declaration depends on our being good friends with the United States. We all earnestly hope that that may be, but for the United States to

act as convoy to their food ships under articles 61 and 62, is such an act of participation in hostilities as to be almost equal to being allies. It has been said by the honourable member for Kingston (Mr. Cave), with whom I agree entirely, that we do not gain as neutrals. As far as I can read this thing, I think we are hit both ways, especially when we are belligerents, because as belligerents we risk our own ships, and we consent to the sinking of our friends' ships when they come to help us. I think we can only look at this thing from the point of view of belligerents. Our interests as neutrals and our profits as neutrals are the interests and profits of the few. When a man's ship is sunk, it is a question more for the underwriters than for the shipowners. Our interests as belligerents are concerned with the food and ability of resistance of the many. This amendment is reasonable; I cannot understand the objection of the Government to accepting it, unless they are determined from the party point of view to save the face of the Foreign Office and Admiralty for having concluded a bad bargain. The prevailing feeling throughout the whole of the country is that in some way or other we are getting the worse of the bargain. Nothing which I have heard in this debate has removed that impression from my mind.

One has been struck with the minatory tone of those people who are upholding this Declaration. I have not really heard one single man who seemed to be content and happy that we are going to sign it. They approach it from the point of view that we have not conceded anything, that they admit there are points in it they do not like, but that on the whole they think it a good thing to have a definite agreement in regard to points of maritime war. We are all agreed on that, provided it does not cost too much; and that is a philosophic frame of mind in which to approach it. But we must remember we are dealing with a question in which philosophy will be no help at all when this Declaration comes into active operation. We are told that it illustrates the principle that half a loaf is better than no bread. It may be if the bread is good, but we think that this bread is sour, because it is saturated so much with the spirit of concession. What we wish in asking the Government to withhold ratification immediately from this Declaration is that in future this half a loaf should not be saturated with the tears of our people, grieving at leisure for having legislated in haste. We are told that it has been two years before the public. I admit. But what sort of a period of two years? I do not suppose that in history there have been two years so full of incident in political life in this country. We have had the budget, we have had two elections, we have had the lamented death of the late King, we have had the insurance bill and the coronation of our King.

It is the common experience of political thinkers that the British public like to take one thing at a time. It is only at this individual moment that this question is seriously engaging the attention of this country, and I maintain most earnestly that we have no right to sign a document upon which that most vital point, the promiscuous arming of merchantmen, and the possible revival of privateering in its most vicious form, are left an open issue. As regard that point I object to the Declaration, not only for what is in it, but also I object very much for what is not in it. This question should be cleared up before we tie ourselves up with an ambiguous scheme of this nature. The First Lord in reply to a question of the noble lord and member for Portsmouth (Lord Charles Beresford) gave a very cryptic sort of assurance that if our ships are burned by cruisers or merchantmen not properly equipped as we maintain under regular authority as war vessels, it would be worse for the men who did it. What does the right honourable gentleman mean? If we say nothing now, and leave our position in doubt we certainly can not tell those men "you are violating public opinion in this country," and the civilized world would be against us if we proceeded to treat them as pirates. And if we did we would engender into hostilities a bitter feeling which would be most deplorable. It is an idle threat for the First Lord. He knows it, and we know it. But I should like to be quite clear as to what position we are going to take up before we sign a scheme of this sort. I was astonished at the light and airy manner in which the honourable member for Hexham spoke about the damage which our ships might suffer from these armed merchantmen in time of war. I would recommend him, and also any other honourable member in this House who has never read the book to make a very careful study of Captain Semmes's book, *My Cruises in the Alabama*. The *Alabama* was nothing more than an armed merchantman. She was of much the same class as the ships we had afloat in 1885 in China, when the Russian scare was on. I have been on board these vessels. It is absolutely impossible to overestimate the damage which could be done by half a dozen *Alabamas* let loose on our trade routes, and interfering with our food supply, which is so vital to the position of this country. We would have dismay, consternation, and panic following each other with horrible rapidity. Clause 47 in this agreement gives, as the honourable member for Kingston pointed out, the right of search and of removal from on board our ships. It is a right which the United States and Great Britain have most jealously resisted. It was our exercise of that right against American ships which brought about the war of 1812. Under this particular clause, if it had been in operation 40 years ago, Captain Semmes himself might have been taken off a British ship, after his ship was sunk, and

probably been hanged, because the United States, or the Northern States, were very much incensed against him. As it was in those more humane days, Captain Semmes lived to an old age, and we had to pay 3,000,000 pounds for having a left-handed connection with an irregular war vessel. We used to proudly say that wherever the British flag floated was the safest place. But this Declaration tears a very great piece from our flag when we have to hand over men to foreign powers. Then there is the question of blockade. It is said that this is one of the things from which we get some advantage. My own idea of the value of the blockade is that is becoming gradually and beautifully less, and that with submarines, aeroplanes, and mines we can not risk valuable ships on a coast for blockade purposes. We consent to the sowing of narrow waters like the Thames and the Channel with mines, and we give up the right to close the North Sea between Shetland and Norway.

As far as I can see the whole settlement revolves round the word "conditional." Imagine some naval lieutenant on a wet, blowy night, wishing to damage his enemy. Would he be stopped by paper safeguards? Most assuredly he would not, and he would not be worth his salt if he was. Then we heard a great story about the imperial conference having passed some sort of favourable resolution in regard to this Declaration. Australia, I understand, did not assent, and the South African newspapers apparently do not approve of what their representative did. At any rate, too much ought not to be made of their guarded acceptance, because a great many of the proposals put forward have not received very favourable acceptance; but one can understand that, with the natural feeling of good fellowship and the desire not to hurt feelings, this question received less consideration than it should have had on its merits. Immediately after this Declaration was proposed, Canada, through her Prime Minister, expressed the earnest wish that if Great Britain was engaged in any way that colony should be allowed to contract out. I would point out that in any case we would be called upon to pay any indemnity, and the colonies would not have to pay. The Declaration, therefore, is a very much less important matter to them than it is to us. As to the international court, I have read about that in the Declaration, but I do not read anything about international police to carry out and enforce the court's decision. It is interesting to note in regard to international law how sailors look at it. In 1895 our ship *Agamemnon* during the Japanese War put into a Japanese port, and a Russian ship came up and trained her guns upon our vessel. It looked as if there was to be a battle on the spot. The Russian admiral was communicated with, and the circumstances pointed out to him, and he replied:

I believe in international law when we have power on the spot to enforce it.

A small Republic of South America, or any other small State, would have the right to sink our ships without compensation. Article 65 says that we have to take the whole dose or none at all, and we have to take this foreign medicine for 12 years. In sound finance people do not want long credit, and in diplomacy I maintain that if proposals are not sound, they should not have long credit either. We do not like the medicine, and we do not care to take it for a long period, and all we ask is that this agreement should be subjected to microscopic inspection by our experts. Article 67 requires ratification as soon as possible, so that there is no hurry. We whose interests are overpowering, may be excused if we ask that the matter should be conducted with a little more deliberation. The report of M. Renault is going to be included in the agreement, and if one amendment is accepted, I suggest that in regard to article 69, an amendment should be accepted limiting the period to six years. I would like to put a definite case before the right honourable gentleman (Mr. Burns), who is representing every department of the Government at the present moment, and no one is more capable of representing British interests than he. I want to put a concrete case before the House, of which I had experience. In 1905, I happened to be in Japan on a French steamer. We were stopped at a certain point by a Japanese destroyer. Twenty-four hours before we had dropped a very great great deal of supplies out of the ship for the Russians, amongst them 28,000 cases of brandy. What I ask is this, supposing by accident, bad weather, or some other reason, we had not been able to touch the last port, and had that cargo on board when the destroyer picked us up. The destroyer could not put a prize crew on board, and it could not leave its beat, and therefore under article 49 he would have been justified in putting three or four hundred people who were on board into the boats and sinking the vessel. I think under this Declaration that is what would happen. It might be rather interesting, if that is the case, to be given some idea by the Admiralty of what rations they would consider to be necessary for people so treated. There is a question about prize money, and honourable members opposite have spoken very seriously against it. I to some extent agree, but you must not forget this, that prize money, although it does not prevent the transfer of property, does very much to prevent its wanton destruction, so that there is something to be said for it. It appears to me that the Government entered into these negotiations hoping to raise the level of foreign countries upon the question of maritime war to our level. They failed to do so, and I very much question their wisdom in descending to the lower level from which other people approach this matter. You started by trying to make war humane, and you end by going

to sign an agreement which has the effect, I think, of making it more barbarous than it is already. You have not gained except in some slight degree on the material side, and you have lost very much on the moral side. You are asking us to do like Esau, and sell our birthright for a mess of legal pottage. As sure as we do so we shall have to follow the example of Esau and break the yoke on our necks. I do protest against the country committing itself for 12 years to an inglorious agreement of this sort, which, instead of being a safeguard, is a danger. If it will not stand closer examination we are better without it. The result of the discussion, whatever the division may be to-night has at any rate this most valuable effect: that it has focused public attention on the dangerous position of our food supply, and indeed it has given an effectual answer to what I must term, with all respect, what I consider to be the most imprudent and the most speculative party in the whole country—that is, the “little navy” party. A great deal has been made of the Liverpool steamship owners accepting this. Their acceptance is most guarded. I have in my pocket letters from the Liverpool Shipowners’ Association and letters from the British Mercantile Marine Officers’ Association strongly protesting against this agreement. I represent a large maritime constituency, and as one who believes that the maintenance of naval rights is as the breath of life to this country, I most earnestly ask the Government to favourably consider this most reasonable amendment which we have before us.

Captain FABER. A good deal has been said in the course of this debate about the opinions of captains and admirals both by the First Lord of the Admiralty and by the noble lord the member for Portsmouth (Lord Charles Beresford). I do not purpose to go into what the admirals think, because I am hardly able to follow the First Lord’s arguments, which was that if a man was a captain his opinion was not quite worth so much as if a man was an admiral. It seems to me that if a man was a captain on the 31st May and an admiral on the 1st June that his opinion would be equally good on one day as on the other. It would hardly be the fact, I think, that Lord Kitchener’s opinion as a field marshal on the 1st June would be better than his opinion as a general on 31st May. I would venture to give to the House a few arguments which are against the Declaration of London, and which are held, to use an Irishism, by the naval man in the street, if it is possible to have that man. As everyone knows, he strongly objects to privateering. Privateering, the ordinary naval man says, takes them back to the worst form of fighting in the world, the form that existed 100 years ago and is on a par with guerilla warfare. The punishment for privateering and guerilla warfare is that you are hanged out of hand, which may or may not

be a pleasant operation, but I am perfectly certain the naval officer strongly objects to that form of fighting, and says that it is taking him back instead of taking him forward. The right honourable gentleman and those opposite say that they are anxious for the cause of peace, but nobody can say for a single moment that guerilla warfare is in the cause of peace.

Another argument which I think the men talk a great deal about, and to which the Foreign Secretary adverted, was the fact that men who do not mind responsibility are going to take no notice of the Declaration, that is the good men. We know that the good men in the army and navy are those who do not care in the least about responsibility, and the First Lord of the Admiralty said that that knocked the bottom out of the argument of the member for Portsmouth, which was rather a big job. As regards the point I am raising, I should state that the navy think that it is absolutely impossible for any good man to avoid sinking ships if necessary, and that the men who are bad men are the men who do nothing. The navy think when they are good men they would be liable to be tried by court martial, and they would be subject to court martial if they disobeyed the laws of their country. Another point against the Declaration is that the navy will no longer be able to seal the North Sea. Some speakers opposite said that that was no so, but I would read this:

Blockading must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Article 18 of the Declaration says the blockading forces must not "bar access to neutral ports or coasts," so that our navy will not be able to seal up the North Sea. The further point is that the navy strongly objects, and I think we can hardly blame them, to the "dago" court, which consists of 15 judges. There is a judge from Paraguay, there is to be a judge from Persia and a judge from Peru and one from Servia and one from Switzerland. I can not remember that there was ever any navy in Switzerland or a seacoast, and how are we going to have a Swiss admiral who is going to be the judge of the British navy? We have been reminded by the First Lord of the Admiralty that we have an enormous navy, but surely that is a reason for having more than 1 judge out of 15 who can tell us whether we are doing right or wrong. I can hardly believe that my right honourable friend opposite (Mr. Burns), for whom we have all the greatest respect, could possibly allow, with his fighting instincts, that one out of 15 was enough for the British Navy to have in the court. The Prime Minister said this was a question of high policy. If we leave out the word "high" and call it "policy," I think we should be about the mark because, as a good many know, a good many

right honourable gentlemen on the other side are against the treaty. If we leave out the word "high," it is policy which is keeping the Prime Minister on the path he is going as to the Declaration. As regards the question of food, I do not think that the benches on this side are entirely blameless. If this Declaration had been brought in from this side of the House you would have every big town in England reverberating with shrieks about the cost of your food in the time of war. You would have had the Chancellor of the Exchequer, and quite rightly too, coming down and in his silkiest tone protesting against the possibility of the widows and orphans having their food raised in price by one farthing. Quite right, indeed; I think we were to blame for not making more of it than we have done; if the members of the Government had been in our shoes, they would have made the whole of England ring with the possibility of dear food in time of war. There is one more point which I should like to read from a letter to myself by Admiral Penrose Fitzgerald, an officer who has rendered great service to the country. He says:

Is there anything to be done to save us from these disasters? Peradventure there are some righteous men to save us or the navy might be paid off for all the use it will be.

I will conclude with a quotation which I know is a very fine one, and appropriate:

The Fleet of England is her all in all,
And in her fleet her fate.

Mr. MOLTENO.¹ I have only a few remarks to make. We have had a valuable debate, in which a great many fallacies and fictions which had been raised around this matter have been dealt with. The Under-Secretary for Foreign Affairs and the First Lord of the Admiralty dealt with a number of them, and the latter dealt particularly with the figment that the navy and naval experts were opposed to this Declaration. The speech of the Foreign Secretary this evening has exposed many of those mistaken ideas about the Declaration which for a considerable period has been put before the country and the House. I only desire to say a few words from the point of view of the shipowner. The noble lord the member for Portsmouth (Lord C. Beresford) said the lawyers would not be there when it came to the test. That is very true, but the shipowner has to regard the thing for himself, apart from the opinions of lawyers and experts. He is not accustomed to be ruled by experts, but he forms his own judgment and directs his affairs in accordance with it. He does not require legal opinion, or even the opinion of an ex-cabinet minister. From the point of view of a shipowner we have seen that great uncertainty prevails now with regard to what is contraband. The ship-

¹ Liberal.

owners' societies have pointed out that this placed them in an almost impossible position; there were no means of knowing what they were permitted to do or what they were not permitted to do. There were no means of telling how things stood in this matter in view of the changes in merchant shipping in modern times. These changes have very largely altered its character. Ships at one time carried a cargo all of one class, and it was easy to know what was their origin and ownership, and to determine to whom they belonged, but to-day the character of shipping and cargo is entirely different. The ships have increased in size, more ports are embraced in the voyages, they have enormous cargoes of a varied character; they may be sometimes as many as a thousand consignments in one ship, and there may be people interested in that ship all over the world. That has altered the position of the shipowner, and the difficulties arising from the uncertainty as to contraband have enormously increased.

When the Russo-Japanese War took place, he had an illustration of the enormous difficulty that confronted the shipowner who desired to carry on his legitimate trade and not to interfere in any way with the rights of the belligerents. We saw that ships were sunk, and in consequence this is one of the resolutions passed by associations of shipowners and addressed to the late Government in 1904:

That in consequence of the uncertainty existing among British merchants, shipowners and underwriters, as to what is contraband, a position most detrimental to the interests of the country has arisen, therefore the association begs to impress upon His Majesty's Government the vital necessity for an immediate and satisfactory settlement of the question of what is, and what is not, contraband. That in consequence of the action of Russian cruisers in seizing and destroying and detaining British ships said to be carrying contraband, a feeling of insecurity with regard to the British flag has arisen, and in consequence thereof the shipowners and merchants of other nations are being benefited. His Majesty's Government is therefore called upon to take immediate steps to protect the British flag.

That is the condition of affairs which prevailed then and which still exists, and it was the duty of the Government to do something to assist the shipowners. If we look at the Declaration of London, and the position as regards British shipping, we find that the position is this, that when we are belligerents, it has no effect upon British shipping. Our ships are liable to capture as they were before, and we are able to capture the ships of other nations, therefore when we are belligerents it does not affect us at all, but the position is quite different when we are no longer belligerents but neutrals. Our interests as neutrals are very important. We are the most important shipping nation in the world. We carry half the trade of the world, and therefore this Declaration is very important to us in our position as neutrals. If we gain advantages as neutrals for our shipping to carry on the trade of this country, upon which an immense number of our

population is dependent, it is a very important matter. We have been assured in this debate that this Declaration does not in any way interfere with our fighting powers when we are belligerents. If it has any effect at all in that case it is favourable, but ship-owners want to get advantages for carrying on their trade when we are not at war, and if this Declaration gives us those advantages it is perfectly legitimate for us to accept it. The Declaration clears up a number of these doubtful matters; we know now the conditions under which we may carry on our shipping trade. If we are belligerents we are not harmed by the Declaration, but our gain as neutrals is this, that whereas before the Declaration neutrals had no remedy for wrong action except war, the shipowners now can get redress from the Government and through the prize court without the dreadful arbitrament of war. By the Declaration we do get something like the beginning of a code of law, and that code is to be administered, not by the partial courts of the captor of your ship, but by an international court.

That is of very great importance, and it is a great improvement upon what has prevailed up to the present. The debate on this Declaration has cleared up a number of mistakes in matters of this kind, as to the position of neutrals and the position of belligerents, and in the course of the debate some speakers have compared not what is in the Declaration, but what the British Government endeavoured to get, and left out of sight what is at present the international law on the subject. Does the Declaration give a distinct improvement upon present conditions for neutrals? I think that in any impartial investigation that question must be answered in the affirmative, and if it is so, and it does not imperil the safety of our country, and it frees shipowners from so many uncertainties, and clears up matters that were vague, I think we have all these advantages, and shipowners may safely accept this Declaration. What do we get? Instead of having prize courts which differed in the law they administered, and their procedure, we now get one court which is to administer the law that has been agreed upon beforehand. The matter is not settled in time of stress and strain, and ultimately by act of battle, but coolly and calmly in time of perfect peace. Then we have these rules settled now of all the material points in regard to neutral commerce. Again, we have for the first time food declared not to be contraband when destined for the peaceful inhabitants of a country. The right claimed beforetime to capture and destroy ships is now limited by certain definite rules in the Declaration. The neutral trader is now free to carry all cargo except absolute contraband as between neutral ports.

Again, we have for the first time a free list recognized by international law by which neutrals can carry to ports of the belligerents

other than ports actually blockaded. The value of the goods included in this is for one year alone about 300,000,000 pounds. For the first time the neutral trader secures the right of redress by trial. I think, in view of all these advantages, the British shipowner should have very little difficulty in accepting the Declaration. In conclusion, to sum up, I must say we have in this Declaration an outline of what may prove a most valuable addition to the sphere of law and order. We shall have much less temptation than before on the part of neutrals to revert to war, because the decisions of the courts will be reviewed. There will be far less temptations, too, on the part of belligerents to take unwarranted action. In this way the causes of war will be limited, and this will be an enormous advantage to shipping. Shipping is that part of the national property which is most exposed to the risk of danger and disaster in time of war, being the first part to be attacked. It is a great importance to shipowners to diminish these risks and free them from the danger which always in the first instance falls most heavily upon the shipowners of any country.

MR. POLLOCK.¹ I wish for a very few moments, desiring to hear the honourable member for Bootle (Mr. Bonar Law), to offer my reasons for supporting the amendment of the honourable gentleman the member for York. It is a very curious thing that the persons who are most supposed to gain by this Declaration are those who apparently are most against it. It has been claimed that it is an advantage to neutrals, and that the British shipowner gains very largely. The curious fact is that of the large number of bodies representative of the interests of shipowners and the shipping classes, that all or most of them have passed resolutions asking for further deliberation before the Declaration of London is ratified. It is claimed that in some cases those resolutions have been passed without adequate consideration. But I think that in all cases expert committees have been appointed in order to consider the question, and they have come to a most deliberate opinion that further time and consideration was necessary. Let me illustrate this to the House by referring to the Liverpool Steamship Owners' Association, which has been referred to by honourable members opposite. One of the most able and excellent theses upon the Declaration of London was prepared and presented in the annual report of that association. It is impartial. That report asks for due deliberation and consideration of not less than four large questions. In the fourth question there are eight sub-questions which are propounded. The closing observation made is that:

If these questions are dealt with in detail the country and Parliament will, I think, be able to judge the Declaration on its merits.

It is because we ask that these questions should be deliberated upon and considered that we desire to send this important question to a

¹ Conservative.

commission. How then comes the Declaration before us? The letter sent from the Foreign Office shows that the Government intended not to suggest any new doctrine but to crystallise in a few simple propositions questions on which it seemed possible to lay down a guiding principle generally acceptable. That was what they set out to do. They had done too much. They fear to draw back! They shun the prospect of disappointment and ill-success, and they are asking the House now to ratify this Declaration upon their own responsibility alone. The Foreign Secretary offers the responsibility of the Government as he would offer some national security. Does he forget that the finger of time may efface all the right honourable gentlemen opposite? What we desire is that the best consideration that the best heads possibly can give to this Declaration to be offered to the country should be given. Then the country would be able to judge whether it would be wise or not to ratify this Declaration. M. Renault's report tells us that it is a matter of compromise—a matter in which if you do not read the Declaration as a whole, but read it in part, the reader may find that interest with which he is specially concerned is jeopardised by the adoption of these rules.

If it is true that any portion of the interests of those concerned are jeopardised by the adoption of these rules, is it not clear that we should ask for the highest possible authority to be given to the Declaration before it is ratified, and before any interests at all are jeopardised? How does the Declaration come before us? It is not suggested that it is a complete and satisfactory piece of work! The Government themselves ask the question to what extent the rules themselves will safeguard the legitimate rights and interests of Great Britain; how far their claim to general validity, and therefore general respect, is made good by their inherent justice, and so on. That question is asked, and left entirely to the judgment of His Majesty's Government. Without any disrespect to those able representatives who represented us upon the convention of London, it can not be claimed for them that they spoke the final word on behalf of this country, nor can it be said that honourable and right honourable gentlemen who sit on the front opposition bench are persons who are absolutely qualified, without bias, by their skill to judge whether or not the interests of some class of persons have or have not been jeopardised. The truth is this, that the interests of neutrals are financial and financial only. The interests that we will have in the matter from the point of view of belligerents are vital, and to claim that the Declaration of London is an advance on the right of neutrals is not to claim that it ought to be ratified. No doubt it may have some merits. The question is whether our vital interests decided by our position as belligerents are properly safeguarded, and to that question it is no answer to reply that the Government accept respon-

sibility for what they are doing. Let me turn in order to criticise for a few moments some of the articles in the Declaration itself. The oft-quoted and oft-discussed clause 34 is claimed by the Foreign Secretary to be some assistance to this country, and he claims that the position of conditional contraband, which, of course, includes foodstuffs, is important by the terms of articles 33 and 34. Without going into the terms of article 33 let me agree that we ought to look at the two articles, which have relation to conditional contraband, as a whole, to see whether they form a complete and satisfactory code upon this most important question. But if these be looked at as a whole you can not overlook the fact that article 34 does give to any belligerent the right to treat as contraband foodstuffs, and also lays down the presumption that will arise when certain circumstances have taken place. That is to say, there is a presumption of their destination for the enemy authority if goods are consigned to a fortified place or to a place of the army or fortress of the enemy, and we know by M. Renault's report these words are to be taken to include the base of operations or supply for the armed forces of the enemy.

The Foreign Secretary does not remind us that that is a new presumption and one that is given away by the Declaration. The words "base of operations" have already been interpreted by an international tribunal, and a disastrous interpretation it has been for this country. Political memories are short, and I have been somewhat surprised that in the course of this debate we had not greater reference to the great trial of the *Alabama* claim before the court of arbitration at Geneva in 1872. One or two honourable gentlemen opposite, in referring to the matter, mentioned the name of Lord Selborne, the bearer of an honoured name, who was our representative before that court, and those who are curious and care to know his view in the matter that came before the court might be instructed if they read what he has left on record in regard to the matter.

What are the points? One of the points was that we were responsible for the depredations that took place by the *Florida* and the *Shenandoah*. The question that came before the court was whether or not England was responsible for what they did. The *Florida* put into Melbourne and obtained 250 tons of coal, and departed within 24 hours. She only got what any other belligerent or neutral could have got. But it was held by the court that from and after the time the *Florida* left the port of Melbourne we were responsible, because she treated our colonial port as a base of operation. The *Shenandoah* went into another colonial port. She got, according to the true rights of belligerents, coal, and it was once more held that in consequence of her having put into colonial port we were responsible for the depredations which took place, and the award clearly laid it down and treated these two ports as having been bases

of operations. We had a very able representative in this country, Sir Alexander Cockburn, at that court. He was Lord Chief Justice, and he protested against the award made, and he claimed that a far more limited sense should be given to the use of the term "base of operations," and he laid down the terms which he thought should be the true interpretation of these words and the limited terms that he asked for were as follows:

In naval warfare a base of operation would mean a port or waters from which a fleet or ship of war may watch the enemy and sail forth to attack with the possibility of falling back to the port or water in question for fresh supplies or shelter for the renewal of operations.

Is there a single port in this country into which food supplies in any quantities come that would not form a point from which we could watch the enemy or sally forth to attack, and if that is the definition of the arbitration court that sat to determine the matter between us and the United States, and the claim and limited claim of our own Lord Chief Justice, does anyone suppose in future decisions a narrower interpretation will be given to these words? Is there a single port that could be useful for receiving foodstuffs that would escape from the interpretation of this article 34? If that be so, how can it be suggested that clause 34 does not give away very considerable rights? It gives the right to our enemies to presume that foodstuffs coming from any of our ports are necessarily going to the enemy authorities, unless and until this presumption is disproved.

I dwell upon this clause because it is much discussed, but discussed in a limited outlook, and it is even forgotten that we have already a judgment against us which puts us in the unfortunate position that the presumption would always be made against us, and that all our ports and waters would be taken to fall within article 34. That is a very important and very serious position in which to find ourselves. I pass now to the next clause, article 35, and there we are told that ships' papers are to be conclusive proof as to the voyage on which the vessel is engaged and as to the ports for the discharge of her goods. Looking at the report that accompanies that, we are told that in case of searching a vessel—a most important right, the right of searching is perhaps the most important right that belligerent can exercise against neutral shipping—that the ship's papers are proof unless the facts show their evidence is false, and indication is given in that report that you may search and discover whether the ship's papers are true. What value is it, then, to tell us that under article 35 the ship's papers are conclusive proof? If you read the report of the article it is clear that the article is contrary to the report, and the report overrides the article, and once more confusion is created.

We are told by the reasoning of those representing this convention that as they gained a point on the question of the continuous voyage in respect of absolute contraband they might give up something on the question of the conditions of contraband. The question of conditional and absolute contraband are matters which can be set off one against the other. That is a most unsatisfactory way of dealing with it, and the reason given in support of the attitude they took up, or rather which they were driven to take up, is, to my mind, highly condemnatory of the unfortunate result of their labours.

On the question of contraband the Foreign Secretary asked us to look at the convoy clauses, in which he said we had gained a great deal because neutral vessels are exempt from search. That is so under clause 61, but when attention is drawn to article 62 it is immediately said if a controversy can arise they are really not exempt from search. and if, in the opinion of the commander, the facts justify the capture of one or more vessels the protection of the convoy can be withdrawn from such vessels. The Foreign Secretary suggested that the convoy clauses offered a complete protection for neutral vessels, but we find that a controversy can arise where the convoy is acting improperly, and then the facts are to be examined, and if they justify the capture of one or more vessels then the protection is to be withdrawn. Those two clauses are actually antagonistic, and instead of giving security to neutrals they are only a couple of clauses which add an increasing difficulty to understanding and laying down the principles initiated by the Declaration. Those are a few amongst many points which can be made against the Declaration.

We have heard a good deal of somewhat subtle argument as to the various rights which are intended to be dealt with. I think all those doubts could be set at rest and dealt with if we had the confidence of some high authority to be called to settle this matter. The Foreign Secretary said it would be possible to get a committee which would condemn the Declaration in 24 hours or which might support it in 24 hours. We do not ask for either the one committee or the other, but we do ask that it should be submitted to the unbiased judgment of men of known repute, and upon their opinion our course should be moulded. But to ask us blindly to accept the Declaration of London on the authority of the Government is to ask us to accept an illusory foundation. This proposal is put forward in no party spirit, but it is an honest and sincere endeavour to serve the best interests of the country. It is with this object that we are asking that the very best intellects should give their attention to this matter and this House should decide when those facts have been placed before it.

Mr. BEALE.¹ I do not think the last speaker should be taken seriously when he asserts that the House has been asked blindly to accept the statements of the Government. For the last few weeks various authorities have been at work enlightening us, and having read most of those authorities, not excluding the admirals, and the opinions of all those who can give us any real light, I have come to the conclusion that there is no foundation for the complaint which has been made in regard to this Declaration. I will endeavor not to go over any of the ground which has been touched upon by previous speakers. It is said that there is a difference of opinion amongst shipowners. I think the honourable member for Hexham rather understated than overstated the views of shipowners on this question. I have in my hand a copy of the resolution which was quoted by the honourable member for Leamington, in which it is set forth that the shipowners, having considered the reasons urged against the adoption of the Declaration of London, are of opinion that its provisions are not in favour of the rights of belligerents but in favour of neutrals, and the opposition is based upon the sacrifice of the rights of neutrals to the belligerents. They further declare that they are of opinion that the adoption of the Declaration of London will facilitate and prejudice the carriage of food supplies in neutral shipping in time of war.

I do not want to carry further any of the points of detail on which honourable members and parties outside the House are really at issue. We may be wrong in our prophesies and we may be wrong in our conclusions as to what will or what will not happen under this Declaration. Nevertheless, I think that we have before us sufficient material without any further enlightenment to make up our mind whether we should vote in favour of this naval prize bill establishing as it does a tribunal available under the general terms of the Declaration of London. There may be provisions in the naval prize bill relating to things which honourable members opposite think are very essential in the Declaration. For my part I think that the whole question of this particular amendment is—do we gain anything by postponing or reinquiring as to whether we shall set up this court in view of the adoption of the Declaration of London? So far as I can make out, the great object of honourable gentlemen opposite is that they think by reconsidering the Declaration of London and re-discussing it with foreign powers we might possibly go one better. I think the chances of doing that are very small, considering the advantages that shipowners have acknowledged throughout the country. In view of the arguments put forward in favour of this bill

¹ Liberal.

I do not think we ought to hesitate for a moment in regard to its passing through the House of Commons.

I wish to draw attention to one or two points which have not been made the ground work of any speeches of any honourable gentlemen I have heard. It is not of so much importance whether you or I agree to the Declaration, but it is of importance what our united forces can secure the performance of; and, as this convention lays down propositions, the violation of which will always be the affair of neutrals, the question is: What means have the neutrals of getting the benefit of the terms of the present law, and what means will they have of getting the benefit of the terms laid down by this Declaration? There are only two ways by which the obligations of a convention of this kind can be enforced: Either the violation in its terms in *casus belli*, or there is no remedy except in damages, practically after the war is over. The wrong will be done first, and then there will be only the remedy in damages, but, if you can lay down clearly and distinctly, instead of leaving it in a chaotic state where the wrong exists, so that one may know at once when any belligerent is violating a convention made by the nations, you get a greater chance of a better remedy. The injured neutral knows he is wronged, and the opinion not only of the injured neutral, but of all neutrals, would turn against the belligerent who does the wrong, and you might possibly get pressure put upon the enemy who does the wrong far more beneficial than merely having recourse to damages. It is for that reason, I think, although there may be a doubt on one or two points, that the advantages are enormously in favour of having the term definite. There is no such difference between the old term as used by Mr. Bryce, "A place serving as a base of military or naval equipment" and the term of the Declaration, "base of supply to the enemy" as would prevent the belligerent from asserting his right in cases of doubt in the one case any more than in the other.

The right honourable gentleman and learned gentleman criticised the composition of this international court. I myself do not think that criticism of the court founded on the fact that the people whose interests have to be decided at the court have small representation on that court are sound. The court must be looked upon as one which will act in a judicial capacity, and I should rather go the other way, and say people who are immediately concerned should not be judges of that court. I do not think that kind of criticism of the nationality of the judges is of very much value. The thing that struck me most was a passage in the honourable and learned gentleman's speech to the effect that our prize courts already were so good and so complete. Another honourable gentleman went further and said we have given the lead to the rest of the world, and the decisions of our courts are quoted. If our courts have that position, is it to be supposed that

a tribunal composed in conformity with the wishes of other nations in the way suggested by the schedule of this bill will have less respect? I agree with the honourable member for Dumfriesshire that it is a great gain to shipowners to have a tribunal of this sort set up. The details have been worked out, and all our minds were clear about them long before this debate began. I do not myself think anything we have heard goes further than the clear summing up of the pros and cons by Lord Lindley. I certainly think no case has been shown to deter us from taking this great step, which I believe is the prelude to a step of greater international importance of more far-reaching effect.

Mr. BONAR LAW. The subject we have been discussing for three days is certainly a very complicated one, and I suppose, in the end, none of us can say much more than has just been said by the last speaker, that, after listening to everything put forward, we have made up our minds one way or the other. I quite admit it is no argument against this Declaration, or any similar international declaration, to say that we as a nation do not get everything we want, and that there is a great deal in it we should wish to see left out. After all it is a question of the balance of advantages and disadvantages. Having admitted that, I may say further that if anyone cares to read, with an impartial mind, the letter of instructions sent by the Foreign Secretary to our representatives, pointing out the things which, in his opinion, were vital, and if he compares those instructions with the actual results of the Declaration, then the only conclusion one can arrive at is that we have given up everything we considered vital. The only way to deal with a question of this kind is to deal with the advantages and disadvantages, and set one against the other.

When a party man claims that he is not wishing to deal with a question in a party spirit, such a claim is received with a certain amount of scepticism. In spite of that, however, I desire to make such a claim. I am bound to say I am inclined to think that, when a complicated subject like this has been discussed and dealt with by people whose interests are the same as my own, and who have no bias, the chances are they are more likely to be right in their conclusions, and for that reason, in the early stages of the discussion, I did hold the probability was that the Government were right in this Declaration. The first time I began to change my view was on reading the debates in the House of Lords, when I had an opportunity of seeing everything that could be said there on behalf of the Government. Since then I have studied as closely as possible whatever has been stated, and now I begin to think that to ratify this Declaration as it stands would be little short of a national misfortune. That, I admit, is a very strong thing to say, and I must do my best

to justify what I have said. Let us consider what are the advantages, and set them against the disadvantages.

Let me take first what are claimed to be the advantages. I have either listened to or read every speech by members of the Government in support of the convention, and up till to-night I considered there were only two advantages that were claimed for the convention as it stands. The Foreign Secretary greatly surprised me by introducing a third advantage into the discussion this afternoon. He rebuked my right honourable friend the leader of the opposition because he was, he said, out of perspective, and he had left out of account an essential factor of the Declaration, and that was our position in regard to blockades. What does that mean? It means that there is one case in which, although we have not got our way by any means, we have approached more nearly getting it than in regard to any other point. I take the view of my right honourable friend the leader of the opposition, and do not attach great value to this question of the blockade. Every article on this subject written by sailors has declared that the blockade in modern times is not of the value which it used to be, and that, owing to the danger of submarines you can not have a close blockade, while, by this very Declaration it is impossible for us to have a widely extended blockade, because it is not allowed to cover neutral coasts. I am strongly of opinion that the reason why the right honourable gentleman so nearly got his way in regard to the matter is that those with whom he was dealing held it to be of little or no value. In regard to its naval value, I admit I am not competent to judge, but it is a most extraordinary fact that the First Lord of the Admiralty, posted by the Admiralty it may be presumed, should have made a long speech on this subject and should not have dealt with the very thing which we are told from a naval point of view is essential. I can not pretend either to judge it from the point of view of strategy, but I can judge it by the inconsistencies in the speech of the right honourable gentleman himself. In the earlier part of his speech he told us it does not matter much about contraband in regard to any great continental power, because we could not seriously affect it. If that is true, what are you going to blockade, and how does it become of such paramount value in dealing with any foreign power. Sir Edward Fry, our representative at The Hague Conference, surely has some means of judging. The Foreign Secretary tells us that blockading is of immense value. Sir Edward Fry, in an article published on Saturday, said it appeared to him that the right of English traders as neutrals were preserved, and that the limitation of area of capture benefited the trade, but at the same time it must be admitted that to a corresponding extent the rights of England as a belligerent suffered by the limitation.

Let me turn to the other advantages which have been claimed. First there is the free list of articles which are not liable under any circumstances to be treated as contraband. As is pointed out by the Foreign Secretary in his letter of instructions, nothing is more important to the trader than certainty, and it is important to him to be certain that various articles shall not be treated as contraband. But, after all, the importance depends entirely on the nature of the articles included in the list, and when one goes through that list it is found to be entirely illusory. We find, taking the whole list, that, with one or two trifling exceptions, there are only two articles which have never in the whole history of the world been claimed as conditional contraband by any nation. These two articles are hemp and cotton. Hemp was a natural contraband, but no power would say it is so now. With regard to cotton, how does the position stand? Only once has cotton been claimed as conditional contraband. It was claimed as being so by Russia in the Russo-Japanese War in one case. It was claimed in regard to a new list which they had made contraband. This country remonstrated and the United States remonstrated. What happened? Russia gave way and abandoned the practice. The Liverpool Shipowners' Association is the one body in the whole country which is supporting the Government, and naturally the Foreign Secretary, being very proud of his one ewe lamb, has quoted their opinion in many of the letters he addressed to other bodies. The writer of this pamphlet actually said that he believes it would be possible, though difficult, to constitute the tribunal, forgetting that the tribunal is already constituted and that you can do nothing whatever in the matter now. I am not going to deal any further with the composition of the court, but the other condition, and a very vital condition, is that this court, whatever its composition, should have a body of law to administer which is perfectly clear and distinct. If there is not a reasonable certainty on the part of those who might be supposed to judge in the neutral country as to what the decision is likely to be, the court will be of very little value. You must therefore have a reasonably clear body of doctrine. Whatever else may be said about these 71 articles in this Declaration, this at least is certain, that everyone is in the most ambiguous and indistinct form except the one or two where we have clearly given away what we wished to contend for. I think this greatly vitiates the value of the international prize court.

But there is something more to be said. Some of the people who spoke about that court had an idea, apparently, that all that an injured citizen of a neutral country has to do is to go to the prize court and get justice. But it has got to go through the ordinary courts of the nation which has broken the law first, and only afterwards goes to the international prize court. What happens then? The interna-

tional prize court can not give costs in the national court, and, more than that, so far as I have been able to make out, and I have consulted those who are competent to judge, the most that the international prize court can give in any case is the value of the property that has been wrongly taken. I ask any honorable member in the House to realize the expense that the litigant will be put to, to realize the uncertainty and to realize further that he can get no indirect value, including that resulting from the sinking of the ship, at the time which could be used profitably, and I say the value of the international prize court is greatly reduced. But there is another consideration which is far more important, and which was made the central argument by the leader of the opposition. An international prize court is not altogether without value. No one will deny that. Take, then, our position as neutrals. The important thing for the traders of this country as a whole is not that the individual trader whose ship is seized should have a little more chance of getting decent compensation. The important thing is that during the war the neutral's trade should not be interfered with. By accepting this arrangement proposed by the Government we entirely alter the basis upon which the prevention of interference is going to be dealt with. The Under-Secretary, I think, gave it as one of the merits of the Declaration that neutrals would no longer be remonstrating with belligerents. It would all be left to the prize court. What is the good of that, even to neutrals? Two or three ships are seized or sunk. Is a shipowner going to risk letting his ship be sunk on the chance of getting compensation later on? The only value to us even as neutrals is the power of remonstrating and putting an end to the evil at the time of its occurrence. The Foreign Secretary and the Under-Secretary both minimized it. They both said nations will not go to war in a case of that kind. They are going against not only the whole of actual experience but against common sense. If two nations were at war, is not that the very time when the neutral power would be able to use diplomatic pressure upon them in a way they could not use it at any other time? They do not wish to add to the number of their enemies. I could not put this better than by quoting the words of the Lord Chancellor himself. Speaking of the position as it exists to-day, he said :

When we are at war we shall then be a nation interfering with neutrals, and liable to their pressure in the midst of our own great difficulty. We should give way in order to avoid complications even if we were right.

If we should do that would not other nations do it? Is not that our real protection? These are, as far as I have been able to follow, the only advantages which are claimed. There is, it is true, another kind of advantage if you like which has been used, strange to say, as the peroration of their speeches both by the Foreign Secretary and

the Under-Secretary. They tell us that not to ratify this Declaration is to go back on the march of civilisation. They tell us that it is to encourage nations to pile up armaments under which they are staggering, and that it will even interfere with international arbitration with the United States. What earthly connection has the one with the other? I can see none. The whole of that kind of argument is simply an appeal to what I may call sloppy sentimentalism, and sentimentalism which is all the more sloppy because in this case the Declaration which we are asked to ratify is not a Declaration which will diminish the horrors of war, but which will admittedly increase them. If that is denied I am prepared to prove it, but everyone admits it. I have considered the advantages which are claimed. Let me consider briefly the disadvantages. Take, first, the conversion of merchant vessels into warships on the high seas. That is a barbarous evil. It could not be put more strongly than in the words of the Foreign Secretary himself. What did he say? That the Declaration makes no difference one way or the other. That is a position which cannot for a moment be maintained by any impartial man. It does make a difference. In the first place nobody will deny that a prize court may deal with a case, and if that prize court gives its decision against our views we are compelled to accept it, and we have legalised once for all what is piracy or something very like it. Look at the position at which we stand to-day. You cannot discuss anything of this kind around a table, and try to impress your view upon others and fail, and say that the position remains exactly as it was. The thing is impossible. I can bring that to a clear issue by asking a question which I hope the Prime Minister will answer. That is precisely the same question put by the leader of the opposition to the Foreign Secretary, who did not answer it very clearly.

What is our position going to be when the Declaration is signed? Remember there is no half-way house. These merchant ships which are to be converted into warships besides the vessels they are going to destroy—are either warships or pirates? Are you going to treat them as pirates?

Mr. HOLT. Why did not your Government treat them as pirates?

Mr. BALFOUR. It stopped the practice, which is impossible under the new arrangement.

Mr. BONAR LAW. It stopped the practice. Are you, I ask, going to treat them as pirates? If you are you must say so now. You cannot do it after war has broken out. I put then to the right honourable gentleman this question: What are you going to do now? We are told that if other nations play at that game we can play at it, too. To a certain extent that is true. But we can only play at it if we make preparation in time of peace. We cannot begin to play at it

when they are already on the high seas when war breaks out. We must do it beforehand. That is a plain question which I put to the Government. Do they intend to prepare for it in time of peace? If they do not, they subject us to an intolerable handicap, and if they do then there is not the slightest use of telling us that the position is unchanged. That is the first disadvantage to which I shall refer.

Let me take the sinking of neutral vessels. That, again, is a barbarous practice. It is one from which we shall chiefly suffer. What has the Government done? They have legalised it under, I think, conditions which will make it an almost universal practice. I really was amazed to hear the right honourable gentleman quoting from one of our representatives a statement that the foreign delegates considered that it would occur very seldom in practice. They must really have thought they were talking to very foolish people. We can judge of that as well as they can. What is the position? Under article 49, I think, belligerents are allowed to sink any neutral ship if it will interfere with the business on which the warship is engaged. If you send a ship to destroy commerce of course you will have to take away everything that will interfere with its operations. If it is to be an effective destruction of neutral commerce it must take the form of sinking.

Why have they done it? It is said that the claim has been made by other countries. As a matter of fact it has only been done once in the whole of history. We had it done by Russia in the Russo-Japanese War. What happened? Lord Lansdowne remonstrated, and said it was an outrage. The Secretary for Foreign Affairs (Sir E. Grey) indicated—I am sure he was entirely mistaken, and I do not think he could have meant it—that the remonstrances had no effect. On the contrary, though I have not the exact words used by the Russian minister, my right honorable friend (Mr. Balfour) speaking in this House as head of the Government, used these words at that time. He said he had received the most specific assurance that no such action would be taken in the future. But we were told that in spite of this assurance it did take place. So it did, and the explanation given by my right honourable friend this afternoon was that the Russian Government never contended that they had any right to do it. They said it had been done owing to the disorganisation of their forces. And now we, as a nation, for the first time legalise the barbarous practice on the ground that it was done by a nation which itself gave up the claim to act in that way. It is no wonder that an honourable member, in a letter to the Times, said that any British minister should rather have cut off his right hand than sign a Declaration agreeing to sink neutral ships. But the Government say, "What could we do?" This is the criticism that I make against the Government, and especially against the Foreign Secretary. I do not deny that they have got

possibly the best agreement which was possible at the time. It is almost impossible, as anybody knows, to get any reasonable proposal if everybody has to be unanimous in a great compromise. Yes, but the criticism I make against them is this: They apparently went into that conference determined to get an agreement—a good agreement if they could, but to take a bad one rather than get no agreement at all. I say, without the smallest hesitation, that from the point of view of the interests of civilisation they would have been better not to sign the convention than to accept such conditions as are in this one. What would have been our position on these points—the sinking of neutral ships, and the converting of vessels on the high seas? We have a right to protect our interests. They all admit that. Our views are in the interests of humanity. That is admitted, too. Can anyone doubt that those interests would have been better served by protesting against this proposal than by accepting it and making it part of the law of nations? Now I must shorten my remarks, for the right honourable gentleman the Prime Minister is going to reply. He only wants 25 minutes, and I will stop in time to give him what he requires, whether my argument is concluded or not.

THE PRIME MINISTER (MR. ASQUITH). I shall require less than that.

MR. BONAR LAW. That is a very poor compliment to my speech.

Now I come to what I think is the vital defect in this convention, and that is its effect upon our food supplies in time of war. Everyone admits how important that is, but I think very few of us realise at all what the position of this country will be at the outbreak of war with a great naval power. We depend for our food supplies on those that come from overseas. We have never waged war—no nation in the world has ever waged war—under those conditions. It is impossible to realise what the effect of that would be. I believe the really critical time will be in the first few weeks of war. Remember this is the vital fallacy of the speeches we have heard. Remember that what will matter is not what our rights really are or what they are declared to be by prize courts. What will matter then will be what the mercantile classes believe our rights to be under the Declaration you are asking us to approve. Can anyone deny that from the point of view of supplying us with food our position is worse under the Declaration than it has hitherto been. I do not see how anyone can deny it, considering the position first of all as regards any possible enemy. We are in precisely the same position now as they are. They have to prove, as we have to prove, that food in these ships is destined for the armed forces of the other side. By the doctrine of continuous voyage, which is not our doctrine, but which the Foreign Secretary said was the accepted doctrine of the world—

SIR E. GREY. No.

Mr. BONAR LAW. I beg the right honourable gentleman's pardon. It is in the instructions—

SIR E. GREY. Germany disputed it in the South African War.

Mr. BONAR LAW. That may be, but that was the expression of the right honourable gentleman. I will take it even at that. Under the doctrine of continuous voyage, suppose we are at war—I hope no one will think that I am suggesting that it is likely to happen, I hope it never will—with Germany—as regards food supply we should be in exactly the same position as they. If food destined for the German Army or Navy went to Antwerp or Rotterdam we could stop it in precisely the same way as that in which Germany could stop it coming to Liverpool or Glasgow. That is the position to-day. Do not let anyone say, as our representative said in this report, that that is a matter of very little consequence. It is not of as much consequence to them as it is to us, but it is of very great consequence to them. Suppose that the German Army were mobilised; there would be a great part of the population drawn from civil occupations, and they would have to import a great deal of food. This Declaration is to last a long time. Before it expires they may be importing immense quantities. Does anyone say the fact that an American ship having tinned meats which were going straight to the German Army could pass through our Channel fleet and we could not touch it it does not mean a prejudicing of our position? And, more than that, suppose we found that our enemy was dealing unreasonably with our neutral shipping, if we could retaliate by treating in the same way the food that was going into Germany it would mean a great deal. Consider now what our position is. I say and believe it is unanswerable that there is not a port in this country to which food can come, even for the civil population, without the probability of a court deciding that it is contraband, and it is certain that the commander of a foreign cruiser would declare it was contraband. The Foreign Secretary passed over that in a very gingerly way. I say that no serious attempt has been made to deny it, that under the effect of article 34 there is no port in this Kingdom to which food for our civil population would come without being treated as contraband. Attempts have been made—the Lord Chancellor made one—to deny this. He was asked to name a single port where the food could come. He named Bristol. Why, Bristol has an artillery depot within 25 or 30 miles. Contrast what the Lord Chancellor said with what the Foreign Secretary said. The Glasgow Chamber of Commerce asked “Will food be brought to our civil population of Glasgow without danger of interference?” The right honourable gentleman said, “I do not know. The prize courts will settle that.” Then the net result really, in my opinion, is that it is

no exaggeration to say, so far as the continental enemy is concerned, that we have made this the position, that food in their case is not even conditional contraband, and in our case it is absolute contraband. I am sorry, in the time of my disposal, I have to leave out a great deal of the argument, but I will content myself now with stating this: I speak strongly on this matter, because, as a matter of fact, I do feel that to ratify this Declaration would be an actual misfortune. I may be entirely wrong—I am open to conviction. I can not understand why the Government refuse to accept the amendment which was moved by my honourable friend the member for York. Let us consider what the position is. We have only asked that the subject be considered by an impartial tribunal which is interested in the matter. Surely there is good ground for that. The dissatisfaction expressed with this convention is more widespread certainly than has ever been the case on any question of the kind in my lifetime. It is uniform, the width of feeling against it. Take the navy. There never was such declaration against any policy as that which the admirals signed. It is quite true that the right honourable gentleman the First Lord of the Admiralty, who, I am sorry, is not present, did belittle this statement. He belittled it in the beginning by saying that an admiral's opinion was of no more value than that of the man in the street. I think he qualified that, but even with his qualification it was pretty strong. It may be true—I do not think so—but even if it is true, if the admiral's opinion is of no more value than that of the man in the street, it is at least of as much value, certainly more unbiased than the opinion of a man in the Cabinet. Then the right honourable gentleman went on with what he called an analysis, which reminded me of the tale of the little nigger boys who went out to sea, and the result of the analysis was that the admirals were not left at all. I do not think it was a good argument, and it seemed to me a case of fouling his own nest. What the First Lord of the Admiralty practically said was this, that these men who bore the rank of admiral were not entitled to the weight which attaches to the name of admiral. May I ask why they were made admirals?

As a matter of fact, the whole of that argument could have been put by the right honourable gentleman more easily in the form of a conundrum. He could have said to the House, "When is an admiral not an admiral?" and he would have to give the answer, "When he differs with the First Lord." But when all is said and done, this remains, that more than half the navy alone who are entitled to speak, and who have held the highest rank—others are not allowed to speak—have declared that they consider this Declaration to be disastrous. If we turn to the commercial community it is precisely

the same. I would point out to the right honourable gentleman that in regard to the commercial community there is this difference. Previously politicians have started a question, and we have got them to help us. The exact reverse has taken place with regard to the Declaration. Chambers of commerce and chambers of shipping were the first to move in this matter, and it is the politicians who have followed. I would remind the right honourable gentleman of this. As I pointed out earlier the vital thing at the outbreak of war is not what the risks may ultimately turn out to be, it is what those engaged in trade think they are, and the fact that they are so unanimously against this proposal shows that they think the risks are increased by the Declaration. If you are right, if you are convinced, and by convincing them, that it would do away with a large part of the danger—if you can convince them then do that, but if you fail to convince them, then, I say you ought not to ratify the convention.

The PRIME MINISTER. We have been repeatedly told in the course of this debate and elsewhere that this is not a party question. [Interruption.] I would ask for a little courtesy. We have been told this is not a party question. However much the course of the debate and the speech to which we have just listened might engender in the mind of the superficial observer the contrary suspicion, I will endeavour to treat it as such. The fact that a particular controversy does not fall within the domain of what we call party questions does not, when high matters of policy are involved, absolve the Government from the duty of endeavouring to guide the House of Commons; nor does it allow them, for it would be the worst example, if they were to do anything of the kind, to abdicate their responsibility from the decision which the House of Commons will ultimately arrive at. When the executive Government of the day, after full consideration and deliberation, have come to the conclusion that a great international instrument like this is in the highest interests of the peace of the world and of the maritime supremacy of this country they would be guilty of a gross dereliction of duty if they did not use all legitimate means in their power to ensure assent to their policy. Dealing with the matter as I am going to do just for a few moments as a non-party question, and in regard to which, therefore, one may occupy a more or less detached standpoint, I feel free to say that I do not remember a controversy of any sort or kind in which both inside and outside the House there has been such striking disproportion between the weakness of the attack and the strength of the defence. On non-party grounds it is possible to express an opinion of that kind without the ordinary suspicion of bias. Let me ask the House to consider, first of all, what was the origin and what is the object of what is called the Declaration of London. We start here with the substitution by the agreement of the vast majority,

both of the great and of the minor powers of the world, of an international prize court for special courts of ultimate appeal of the particular country, to the establishment of which those signatory powers bind themselves to conform.

Hitherto, as everybody knows, the sole legal authority in all cases that arose between belligerents and neutrals has been the prize court of the belligerent power, a tribunal which was itself directly or indirectly, at any rate, a party to the case upon which it had to adjudicate. I should have thought there was an almost universal agreement that it was an enormous step in advance to have set up an impartial international tribunal before which all these conflicting and interesting decisions of these tribunals of the different countries might be brought up for adjudication. I am not very sure now that we are all agreed on that position. I am not sure we are in that position after listening to the speech of the right honourable gentleman (Mr. Balfour). I rather gathered that he looked on the setting up of this court as in itself a retrograde step.

MR. BALFOUR. No, no.

THE PRIME MINISTER. Because his argument, as I understand it was this—whilst it may be a very convenient thing for the individual litigant, the man whose ship or goods have been captured, to have a court of appeal, yet the existence of the court of appeal, administering a code of law generally agreed upon between the powers, would impair, if it did not entirely take away, what the right honourable gentleman described as, in his experience, the most potent instrument in these matters, the power of diplomatic pressure on the part of a neutral aggrieved. I entirely differ from the right honourable gentleman on that point. I take the case, which he suggested, though he did not actually express it—I take a case in which, after the Declaration of London has been ratified, a belligerent grossly perverted the provisions of that Declaration, as for instance, according to the suggestion made by the gentleman who has just sat down, by treating all food as if it were absolute contraband, by treating all food consigned to a country like this, because it has to be landed at a British port, as though it were food destined for a base of operations and therefore might be used for the nutrition of an armed force. If that position were taken up by any belligerent, and he committed the further outrage, which the right honourable gentleman suggested, of destroying, not only capturing but destroying, a neutral ship conveying such food to one of our ports, as my right honourable friend said, the United States would be likely to be the only other power put into that position, does the right honourable gentleman say that any neutral power would be in the least degree hampered or hindered in addressing diplomatic remonstrances owing to the existence of the international prize court.

To say that by the establishment of an international prize court the neutral powers have thrown away their natural weapons of offence and defence, and of diplomatic pressure, and, after all of ultimate force, seems to me to be a travesty of the whole situation. Let us take it for granted that it is desirable to set up an international prize court. It must have a code to administer, and, as we all know, although there are some rules of international law which are well settled, there are many other rules and, still more, many other practices which we are in the highest degree nebulous, doubtful, and conflicting, and the object of the Declaration of London is to enlarge the area of settled rules of international law and practice. I do not intend, and nobody has pretended, to argue in favour of this Declaration, that it is a complete and still less an ideal code. It does not in my opinion, block the road any way or close the door to further negotiations and supplementary agreements. It is further to be observed, as has been stated often in this debate, though often ignored outside, that the object of the court and of the code is simply to regulate the rights and obligations of belligerents and neutrals. The rights of belligerents as against belligerents, whether in respect of warships or in respect of the mercantile marine, are not in any way by this declaration either enlarged or contracted. The leader of the opposition, at the close of his speech, made the gravamen of his charge against the Declaration, and summed it up, I think, in this accusation. He said, in effect, that under the Declaration, whether as belligerents or as neutrals, but particularly as belligerents, we are placed in a worse position than before, and that, as an insular power, we are prejudiced by the Declaration in comparison with the continental powers of Europe. I think that is a fair representation of the right honourable gentleman's argument. Let me just examine it. In the first place, it is not, I think, irrelevant to consider what is the authority behind this Declaration. I will not speak of the great or the minor powers, because it may be said we occupy a special, pre-eminent, and in some respects an invidious position, and that therefore their combined unanimous agreement is no argument that the Declaration is suitable to our interests as a nation. This is a very technical matter, so technical that the amendment before the House invites us to set up a commission of experts to inquire into it. Being a technical matter, it is surely not unimportant to observe that our naval experts, including, at any rate, four, if not five, successive Directors of Naval Intelligence and the two perhaps most eminent First Sea Lords we have ever had, are heartily in favour of the ratification of the Declaration. If you look at it again from the juristic point of view, I am sure I am not exaggerating when I say that with one or perhaps two exceptions every authority of the first repute in international law in the United Kingdom is in

favour of the ratification. The other day at the imperial conference, over which I had the honour to preside, we had a most exhaustive and elaborate debate in which each in turn of the representatives of our self-governing dominions expressed his opinion, an opinion in no way biased by that of the Imperial Government. They all of them told us they had been bombarded, ever since they set foot on these shores, by the arguments of the opponents; and without one dissentient voice they passed a unanimous resolution in favour of the ratification of the Declaration. My right honourable friend the Secretary of State for Foreign Affairs, said to-night the United States of America, which is not an insular power any more than it is connected in way with the continental power of Europe, is heartily in favour of ratification. That is a great weight of authority. Are all these people wrong? Are we to substitute for their unanimous and consentient decision some decision of a committee of experts to which the amendment asks the House of Commons to delegate its supreme authority. I do not think the House of Commons is at all likely to accede to that proposition.

Let me very briefly deal with what I may call the profit and loss account as regards this Declaration. You can not in an international agreement of this kind have it all your own way. There must be a certain amount of give and take. There must be a certain amount of compromise. The question is whether upon the whole we, as representing the United Kingdom and the Empire, in inviting and asking the House of Commons to accept this Declaration, stand to gain or to lose? For the reasons I am about briefly to give, I am strongly of opinion we stand to gain. Let us see how the account stands. In the first place, on the credit side of the account we have the new definition of blockade contained in the first chapter, the first 18 articles of the Declaration. The right honourable gentleman who spoke just now said in an airy manner that blockade was of no importance. I do not know whether he has consulted any naval authority. As far as I know, every naval authority in the world has agreed that, next to the power which is most important of all of meeting and vanquishing your enemy on the high seas, next to the power of sinking his fleet, comes the power of effective blockade, bottling up his ships and impeding his operations, and in that way securing your own supremacy. No one has attempted to argue in the whole of this debate, nor, so far as I know, in outside controversy, that it is not an enormous gain to a naval power in the event of war as a belligerent that we should substitute for the rules and practices hitherto put forward by our opponents, the rule we have always contended for, namely, that blockade exists in so far as the area of operations are controlled by our warships, and does not depend upon some imaginary geographical line, and that it is not necessary, in

order that a ship should break blockade and be liable to capture, that it should have formal notification upon its papers. In that respect the British view has been wholly—I will not say wholly, but substantially—adopted in all that was essential and important, and now forms part of the agreed code, law, and practice of the nations of the world. If we had that alone and nothing but that, the Declaration of London would mark a great step in advance. But next—I am still speaking on what I may call the credit side of the account—we have the definition of contraband and the list of free articles. That is an enormous gain to us whether as neutrals or as belligerents. It has been alleged, I know, and is alleged, that as belligerents the recognition of the possibility of food as conditional contraband, with the abolition of the doctrine of continuous voyage may have serious effects upon the food supplies of this island in the event of war with another great country. You never can put an island in this matter precisely upon a footing of equality with a continental country. The whole of our food supply not grown at home, must come across the seas. If carried in British ships in the event of war it is liable to capture, whereas in the case of a great continental rival—I mention no names—a very large part, probably much the greater part of the food supplies needed is grown at home and would come overland, and would not be exposed to the risk of sea capture at all. It is absurd to say that you can put an insular power in that respect precisely upon the same footing as a continental power. Let it be observed, first of all, that it is no longer possible under the Declaration for an enemy to treat food as contraband. Food is taken once and for all out of the possible category of absolute contraband, and that is no imaginary danger. In the next place that part of the supplies which comes in British bottoms—something like 80 or 90 per cent—is in exactly the same position after the Declaration of London as before. The only part affected in any way is that part which comes in neutrals. I am very interested, and perhaps a little amused, more particularly at the honourable member who has just sat down, to notice this new-born zeal for the supply of food to the people of this country, not from our own dominions, but from the United States, Russia, and other foreign countries. What has become of tariff reform? What has become of the great dream of a self-contained and self-supporting Empire? Not a bushel of wheat was to reach our shores to feed our population unless it was grown on British soil.

MR. AUSTEN CHAMBERLAIN. What we are arguing about is ships.

THE PRIME MINISTER. We are dealing with food which comes in neutral ships. If food comes in British ships they are liable to capture. Those are our clear gains. So far as our losses are concerned, they consist as far as I can make out first of all of this perfectly

imaginary dream of the conversion of merchant ships upon the high seas into ships of war, ships which, as my right honourable friend said, are few in number, are well known, and not one of which will escape being sunk either by the cruisers which pursue them or lie in wait for them. I do not agree with the suggestion that some kind of sanction has been given by this Declaration to the destruction of neutral ships in circumstances under which it has not previously been allowed. I admit that a compromise has been arrived at, but it is a compromise which does us no harm. With regard to the actual proposition on which the House is now invited to divide, I say that first of all the Government and then the House of Commons would be false to their primary duty if they were to delegate to any other body, whether of experts or however composed, the obligation and responsibility which rests on them in a matter of high and imperial policy of declaring where the interests of this country lie.

The Prime Minister, having concluded his speech, rose in his place and claimed to move, "That the question be now put."

Question, "That the question be now put," put, and agreed to.

Mr. HUNT (seated and wearing his hat). Mr. Speaker, was the closure moved, and did you put it?

Mr. SPEAKER. Yes, I put it, and it was carried unanimously.

Question put, "That the words proposed to be left out stand part of the question."

The House divided: Ayes, 301; noes, 231.

Main question put, and agreed to.

Bill read a second time, and committed to a standing committee.

JULY 5, 1911.¹

DECLARATION OF LONDON.

Mr. Cassel² asked the Prime Minister whether the ratification of the Declaration of London would be delayed until the naval prize bill, without which the convention establishing the international prize court could not be carried into effect, had been passed by both Houses of Parliament; and whether it was intended to ratify the Declaration of London even if the naval prize bill did not become law.

The PRIME MINISTER. If and when the contingency referred to in the concluding sentence of the question arises His Majesty's Govern-

¹ 27 H. C. Deb., 5 s., 1126.

² Conservative.

ment will consider what action it will be in the public interest to take.

Mr. CASSEL. Will the right honourable gentleman answer the first part of the question?

The PRIME MINISTER. I can not add anything further.

Mr. CASSEL. Will the right honourable gentleman say at all events that the Government will not ratify the Declaration until the bill had been read a third time in the House of Commons?

The PRIME MINISTER. That is not the question on the paper, but undoubtedly that will be the case.

JULY 6, 1911.¹

NAVAL PRIZE BILL.

Mr. Hunt asked the Prime Minister whether he will consider the advisability of discharging the order for committing the naval prize bill to a standing committee and of taking the bill in committee of the whole House.

The PRIME MINISTER. No, sir.

Mr. HUNT. Have not the Government sent the bill upstairs so that the people may not learn and realise their danger?

The PRIME MINISTER. Nothing of the kind. The proper moment to move to commit the bill to the whole House was when the second reading was taken. No motion was made, and the ordinary consequences followed.

Mr. HUNT. Can not you do what we ask now?

The PRIME MINISTER. No, sir.

DECLARATION OF LONDON (ATTITUDE OF ADMIRALTY).²

Mr. Hunt asked (1) whether the naval prize bill has ever been submitted for consideration to a full meeting of the Board of Admiralty; if so, was it approved at the full meeting, and what was the date; (2) whether Sir Francis Bridgeman, now commander-in-chief of the home fleet, was consulted at all regarding the Declaration of London; (3) what is the date, or what were the dates, of any full meeting, or full meetings, of the Board of Admiralty at which the Declaration of London was discussed and approved; (4) whether the Declaration of London was discussed and approved by any full meeting of the Board of Admiralty after its signature by Lord Desart; (5) if so, was such full meeting held prior to the signature of the Declaration by Lord Desart on the 26th of February, 1909;

¹ 27 H. C. Deb., 5 s., 1325.

² 27 H. C. Deb., 5 s., 1330.

and (6) whether, on the occasion when the Declaration of London was approved by the Board of Admiralty, only two members of that board were present; and, if so, were these two the First Lord of the Admiralty and one sea lord?

Mr. McKenna. I will answer the honourable member's questions, Nos. 60 to 65, together. The naval prize bill was not submitted for consideration to a full meeting of the Board of Admiralty. Sir Francis Bridgeman did not become Second Sea Lord till March, 1909, after the Declaration of London was signed. As Second Sea Lord, questions affecting the Declaration of London would not come before him in the ordinary course, except when acting for the First Sea Lord, and I am not aware that any important points came before him officially when so acting. The approval of the Declaration of London was given on the papers circulated to those members of the board to whom it appertained in the distribution of business.

Mr. Hunt. Will the right honourable gentleman say how many naval lords were at the meeting, and are we to understand that the admiral chiefly responsible for the safety of the country from starvation and invasion has not approved the Declaration of London at all?

Mr. McKenna. No, sir. The honourable gentleman does not quite appreciate, if I may say so, the point that in the distribution of business the question affecting the Declaration of London would come before the First Sea Lord for the time being, and, as I stated in my speech, both the First Sea Lords before whom the business came have approved the Declaration of London?

Mr. Hunt. Are we to understand that Admiral Bridgeman, who is responsible for the safety of the country, has not been consulted and does not approve?

Mr. McKenna. No, sir. The honourable member is not in the least entitled to understand anything of the sort. I explained, in answer to questions by the honourable member, that Admiral Bridgeman was not at the Board of Admiralty at the time the Declaration of London was approved. I further remind him that all matters the honourable member has addressed to me in his questions have already been answered by me some months ago.

Mr. Bonar Law. At the time the Declaration of London was considered by the Board of Admiralty was formal notice given to the members of the board that the subject would be considered so that they could have an opportunity of attending?

Mr. McKenna. No, sir. As I stated there was no formal board meeting, but every member of the board had full knowledge of what occurred and every member of the board has full opportunity of asking me to call a board meeting on any subject.

Mr. Ashley. Was any member asked to attend except the First Sea Lord and the right honourable gentleman?

Mr. McKenna. I have explained more than once that the sea lord with whom the matter rests is the First Sea Lord; he came to me, and it was approved by the First Sea Lord and myself.

JULY 10, 1911.¹

DECLARATION OF LONDON.

Mr. Cassel asked the Prime Minister whether the ratification of the Declaration of London will be delayed until the House of Lords have had the opportunity of accepting or rejecting the naval prize bill, without which the convention establishing the international court can not be carried into effect?

The PRIME MINISTER. It would obviously be convenient, if possible, to defer the ratification of the declaration until the naval prize bill has received the royal assent. I see no ground for doubting that that event will occur within a reasonable time. In these circumstances the declaration will not be formally ratified until the other House has had an opportunity of considering the naval prize bill. But beyond that I can not go.

JULY 12, 1911.²

DECLARATION OF LONDON.

Sir William Bull asked the Prime Minister whether the adhesion of Great Britain to the Declaration of London will become final and effective upon the ratification of the Declaration; and, if so, whether the amendments in the law relating to naval prize of war enabling effect to be given to the convention mentioned in the naval prize bill and ancillary to the Declaration of London can be otherwise made than by an enactment passed by both Houses of Parliament?

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The answer to the first part of the question is in the affirmative. The answer to the second part of the question is that an act of Parliament is only required for the purpose of effecting such alterations in the existing prize court acts as the convention referred to in the naval prize bill may render necessary or desirable.

Mr. FELL. May I ask if the ratification will be final and effective on our side, or will it depend upon the others ratifying also?

Mr. McKinnon Wood. The convention will only be operative if the powers concerned ratify it.

¹ 28 H. C. Deb., 5 s., 20.

² 28 H. C. Deb., 5 s., 377.

Mr. JAMES HOPE. Failing the passing of the naval prize bill, will there be any machinery for carrying it into effect?

Mr. McKINNON WOOD. I think it is a question I need not answer. It does not immediately arise out of this.

Mr. JAMES HOPE. Surely the right honourable gentleman must have had it in his mind?

JULY 13, 1911.¹

DECLARATION OF LONDON.

Mr. Hunt asked the First Lord of the Admiralty whether, in view of the fact that Admiral Bridgeman, as commander-in-chief of the home fleet, is the man on whom will depend in war our defense against invasion and starvation, he will ascertain whether the Declaration of London has his full approval?

The SECRETARY TO THE ADMIRALTY (Dr. Macnamara). I must refer the honourable gentleman to the answers given by my right honourable friend the First Lord on 6th July.

Mr. HUNT. Why not have a memorandum, as in the case of the army? Is the right honourable gentleman afraid to have these opinions published?

Dr. MACNAMARA. A series of questions have been put regarding this memorandum, and I must refer the honourable member to the answers already given.

Mr. HUNT. There has been no answer to this question?

Dr. MACNAMARA. Yes.

Mr. HUNT. I say no.

JULY 20, 1911.²

Mr. MACMASTER. * * * A word or two with regard to the imperial conference. Both sides of the House, I think, asked that the Declaration of London should be referred to that conference, and that was done. But my point is this: In my humble opinion I do not think the Declaration of London was ever explained to the colonial members of the conference. I have taken a great deal of trouble in reading up all the points that have been made at the conference. I do not find that there was a full exposition made to the colonial members of that conference, as I think should have been made, in order to enable them to come to a right conclusion. For example, it has been one of the crucial questions, what was the significance of the basis in articles 33 and 34 of the Declaration of London. In article 33 conditional contraband is liable to capture if it is shown to be destined for the use

¹ 28 H. C. Deb., 5 s., 486.

² 28 H. C. Deb., 5 s., 1387.

of the armed forces or of a Government department of the enemy. That is the old policy, and the leader of the House, in explaining the position with regard to the point, stated as appears on page 112 of the minutes of proceedings:

With reference to something Sir Edward Grey said, I do not think it has been sufficiently noted that article 34 is merely commentary upon and interpretative of article 33. Article 33 is the governing article, and nothing is liable to capture unless it is shown—*etabli*—to be destined for the use of the armed forces or of a Government department of the enemy.

That is a limitation which is extended by article 34 of the declaration, and that extension was not put before the conference by the Prime Minister or by the Foreign Secretary. Article 34 does not refer to article 33 only as was presumed——

The DEPUTY CHAIRMAN. It seems to me that the honourable gentleman is redebating the second reading of the naval prize bill. Only one day is devoted to the colonial office estimates as a rule, and I think the discussion should deal directly with colonial administration.

Mr. MACMASTER.¹ I bow to your ruling, but I am merely pointing out the character of the statements made before the conference, and reference has been made to the report of that conference. I say a full statement was not placed before the conference as to what constituted the basis of conditional contraband. One minister stated that there was no definition of the basis, whereas we know there is a definition as a basis of operation and supplies. Then there was the extraordinary statement made in the conference that this country might be at war and its colonies might have the right to decide whether or not they would take part in the war.

The DEPUTY CHAIRMAN. I really do not think the honourable member is making quite a legitimate use of the discussion on the colonial office vote. It seems to me he is in an indirect way rediscussing a matter to which two or three days have been devoted already. I am sorry if he was not heard on the merits of the bill on that occasion.

AUGUST 3, 1911.²

NAVAL PRIZE BILL.

Reported, with amendments, from standing committee C.

Report to lie upon the table, and to be printed.

Minutes of the proceedings of the standing committee to be printed.

Bill, as amended (in the standing committee), to be taken into consideration upon Monday next, and to be printed.

¹ Conservative.

² 29 H. C. Deb., 5 s., 557.

AUGUST 8, 1911.¹

DECLARATION OF LONDON.

Mr. Butcher asked the Secretary of State for Foreign Affairs if he would state by what method of procedure he proposes to make it a condition of the ratification of the Declaration of London that the general report of the drafting committee shall be treated by all the signatory powers as an authoritative interpretation of the provisions of the Declaration, and that the word enemy (*l'ennemi*) in article 34 of the Declaration shall be taken by all the signatory powers to mean the enemy Government and not the enemy people; whether he intends to ask for the express consent of all the signatory powers to such conditions; and, if not, by what means he proposes to make such conditions binding on the signatory powers?

SIR E. GREY. I propose to ask the signatory powers to remove any doubt on these points by expressing an affirmative opinion.

Mr. Butcher asked the right honourable gentleman whether he can give any explanation or definition of the meaning of the words "base of operations or of supply," which are used in the general report of the drafting committee in connection with the interpretation of article 34 of the Declaration of London; whether he proposes to ask the signatory powers for any explanation or definition of these words; and whether he proposes to inform the signatory powers of the meaning attached to these words by His Majesty's Government, and to ask them whether they agree with His Majesty's Government as to such meaning.

SIR E. GREY. I can not add to what was said in the debate as to the definition of the words; nor can I make any further statement as to the course which His Majesty's Government may take.

MR. BUTCHER. In view of the great difference of opinion expressed in the debate as to the meaning of the words "base of operations or of supply," will the right honourable gentleman ask foreign Governments as to their definition?

SIR E. GREY. I am considering that point.

Mr. Butcher asked the Secretary of State for Foreign Affairs whether, in order to illustrate the meaning of the words in article 34 of the Declaration of London, "a place serving as a base for the armed forces of the enemy," he would state what ports in Great Britain could not, in the view of His Majesty's Government, be regarded as places serving as bases for the armed forces of this country.

SIR E. GREY. It is not possible to give a list of ports in advance; it would depend upon the facts at the time.

¹ 29 H. C. Deb., 5 s., 940.

Mr. BUTCHER. Will the right honourable gentleman state any one or more ports which could not come within the definition at present?

SIR E. GREY. No commercial ports which are not serving as bases of supply would come within the definition.

Mr. YERBURGH. Is it not the case that in the event of war, under the Declaration of London, it will not be the British Government that will decide what is a base of supply, but it will be left to the enemy?

SIR E. GREY. At present belligerents decide for themselves, without any definition, but under the Declaration of London there will be a definition by which those belligerents who have signed the Declaration will be bound. How they interpret that definition is of course a matter which rests with the belligerents themselves.

Mr. BUTCHER. Will the right honourable gentleman name one port in the United Kingdom which could not at present be regarded as a base of supply?

SIR E. GREY. None of the great commercial food ports of the United Kingdom could be regarded as bases of supply, because they are not bases of supply.

Mr. BUTCHER. May I ask for one by name?

SIR E. GREY. It would be much more to the point if the honourable member would ask what ports could come within the definition of base of supply. I could not give an answer to that and all others would be outside of it.

Mr. BUTCHER. Can the right honourable gentleman really not answer my question and name one port in the United Kingdom which could not be regarded as a base of supply within the meaning of the Declaration?

SIR E. GREY. There are a number of ports—Liverpool, Glasgow, Bristol, and any number of our great commercial ports.

AUGUST 10, 1911.¹

DECLARATION OF LONDON.

Mr. Eyres-Monsell asked the Prime Minister whether his attention has been given to the statements in the Blue Books [Cd. 4554, pp. 103 and 71, and Cd. 4555, p. 253] relating to the proceedings of the naval conference of London at which the Declaration of London was signed; is he aware that the effect of those statements is that, whereas in cases of naval prize an appeal is to lie from the Supreme British Prize Court to the international prize court at

¹ 29 H. C. Deb., 5 s., 1347.

The Hague, yet no such appeal is to lie from the United States Supreme Court; and can he undertake that, in this respect, Great Britain will be put in as advantageous a position as the United States before ratifying the Declaration of London or the convention relative to the establishment of an international prize court?

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The honourable member is no doubt aware that the arrangement foreshadowed in the statements to which he has called attention has been embodied in the additional protocol of 19th September, 1910, which has now been signed by all the powers signatories of the prize court convention, and which has been laid before Parliament in the Blue Book Cd. 5554. Under this protocol, the rights secured under the convention either to individuals or to their Governments are in no way impaired. The alternative procedure by way of a direct action for damages is not, in the opinion of His Majesty's Government, more advantageous than that by way of appeal from the national courts. On the contrary, it involves the risk, with all the attending practical inconveniences, of a conflict between the judgments of the national courts and the judgments delivered in the same case by the international court. It is only by the system of direct appeal that this difficulty can be overcome, and for this reason His Majesty's Government do not consider the system disadvantageous as compared with the alternative procedure under the protocol.

AUGUST 14, 1911.¹

DECLARATION OF LONDON.

Mr. Perkins² asked the Secretary of State for Foreign Affairs whether, under the Declaration of London, a fortified place includes a port protected only by a harbour boom; whether the fortifications existing on either side of the Solent channels render the ports of Southampton and Lymington fortified places; and whether the naval powder magazine at Marchwood, on Southampton Water, renders Southampton a base of supply.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). In the opinion of His Majesty's Government these questions must be answered in the negative.

Mr. LEE. Will His Majesty's Government do their best to see that the view expressed is accepted by the foreign powers who are signatories to the treaty?

Mr. McKINNON WOOD. That matter is being considered.

AUGUST 15, 1911.¹

DECLARATION OF LONDON.

Mr. Peel asked the Secretary of State for Foreign Affairs has his attention been called to the fact that Sir Edward Fry, G. C. B., extraordinary ambassador, member of the permanent court of arbitration, and delegate plenipotentiary for Great Britain to the Second Peace Conference at The Hague, has published as his written opinion and conclusion regarding the effect of the Declaration of London on blockade, that it must be admitted that the rights of England as a belligerent suffer a limitation; and are His Majesty's Government prepared to postpone the ratification of the Declaration of London until they have further considered this question.

SIR E. GREY. I have seen the statement referred to. There was no agreement about the right of blockade before the Declaration of London; and the agreement now made is not a limitation but an extension of rights, if by the term "rights" is meant rights recognised, as distinct from rights disputed.

MR. PEEL. Will the right honourable gentleman be good enough to communicate that opinion of Sir Edward Fry to the Admiralty, and get a report from them on the subject?

SIR E. GREY. The question has been thoroughly considered by the Admiralty. I do not think there is anything in the opinion of Sir Edward Fry, who is not an expert in these matters, which has not been brought before the Admiralty.

Mr. Peel asked the Secretary of State for Foreign Affairs could he explain the apparent contradiction between article 17 of the Declaration of London, which prescribes that neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective, and article 20, which prescribes that a vessel which has broken blockade outwards, or which has attempted to break blockade inward is liable to capture so long as she is pursued by a ship of the blockading force; and does article 20 in fact authorise the capture for breach of blockade of a neutral ship which has been pursued outside that area of operations to which article restricts such capture.

SIR E. GREY. There is no inconsistency between articles 17 and 20. Pursuit by warship, detailed to render a blockade effective, of a vessel which had attempted to break blockade at a place within the zone which such warship was to watch, extends the area of operations within which the capture of such vessel is legitimate.

MR. PEEL. Does not the right honourable gentleman think article 17 is very definite in its conclusion inasmuch as it states neutral vessels can only be captured within area of operations of the warships and would it not be wise to alter the article so as to make that quite clear?

SIR E. GREY. I have not the text of that article or of article 20 before me, and I can not supplement the answer I have given on the spur of the moment and without notice.

AUGUST 17, 1911.¹

DECLARATION OF LONDON.

Mr. JOYNSON-HICKS² asked the Secretary of State for Foreign Affairs, whether, under the provisions of the existing treaties culminating in the Declaration of London, it would be permissible for a foreign merchant ship belonging to a nation at war with Great Britain to pass through the Dardanelles, which are closed to men-of-war, and as soon as she arrives in the Black Sea to mount her guns and prey upon the English merchant ships, whether, in that case, we should still be unable to send an armed cruiser through the Dardanelles for the protection of our merchant ships, and if he will consider what steps can be taken to prevent such a situation.

SIR E. GREY. The position in regard to the passage of the Dardanelles is not modified by the terms of the Declaration of London. I can not, without a more careful examination of existing treaties, say what bearing they have upon this point, but in any case the most certain protection must remain that of the British fleet.

Mr. JOYNSON-HICKS. Does not the Declaration of London make this difference, that a merchant ship going through laden with munitions of war would, before the Declaration of London, have to go back again out of the Dardanelles to her own country before she could start as a privateer?

SIR E. GREY. No; the Declaration of London did not affect that point at all. We wanted to effect an agreement on the point, but no agreement was obtained, and the Declaration of London therefore left it alone.

NOVEMBER 3, 1911.³

NAVAL PRIZE BILL.

As amended in standing committee, considered.

Mr. BUTCHER. I beg to move that the following new clause be read a second time:

POSTPONEMENT OF ACT.

"This act shall not come into force unless and until the consent of all the powers who are signatories to the convention set out in the

¹ 29 II. C. Deb., 5 s., 2083.

² Unionist.

³ 30 H. C. Deb., 5 s., 1153.

first schedule to this act has been obtained to a modification of articles 10 to 21 of the said convention, and the table annexed thereto, which will provide that the international prize court shall be composed of 11 judges only, of whom 8 shall be appointed by the powers mentioned in article 15 of the said convention."

By this bill we are asked, for the first time in history, so far as I am aware, to place the rights and interests of British subjects all over the world under the control of a foreign tribunal, and we are further asked to say that the whole powers of British courts throughout the world are to be put in operation to enforce any orders which that foreign tribunal may choose to make. I need hardly say that the foreign tribunal to which I refer is the international prize court which is to be set up under the terms of the convention which is the first schedule to the bill. I submit to the House that before the rights and interests of British subjects are to be governed by any foreign tribunal we ought to be absolutely satisfied that that foreign tribunal is composed in a manner in which this House and British subjects all over the world can have confidence. Unless we are satisfied on that point we should be grossly wanting in our duty to respect and preserve British rights. There are two points to consider in regard to this tribunal. The first is its constitution. Is its constitution likely to deal out complete justice in accordance with our ideas of maritime law and what is reasonable in itself? The second point is the law which the tribunal is going to administer. The second question is not touched by my amendment, but will be the subject of later discussion.

What I am proposing now deals with the constitution of this new tribunal, which is to have these gigantic powers, and whose decrees British subjects all over the world are to obey. It is to consist of 15 judges. Of these 15, according to article 15 of the convention—a convention not yet ratified—8 will be appointed by the 8 great powers of the world, Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia. It is a serious question whether we, the greatest naval and maritime power in the world, ought not to have more than 1 judge out of the 15 on that tribunal. Let me assume for the moment that it would be right to give one to each of the great powers. By whom are the others to be appointed? They are to be appointed in rotation by powers, some of whom it is difficult to regard in this connection without a smile: powers who have not the remotest interest in the sea. Most of them have not got a warship: most of them have certainly no commercial interests whatsoever on the sea. They have no commercial navy, no subjects engaged in the carriage of goods, or in over-seas commerce at all, and yet every one of these powers is to have the right, to be exercised in

the mode prescribed, of appointing a judge to sit upon this tribunal and adjudicate upon matters of the most vital importance that can come before any tribunal as regards our commercial interests. That is the convention His Majesty's Government have agreed to through their representatives at The Hague. I ask, by this amendment, that the House do not allow the act to come into operation unless the powers which are signatories to this convention agree to a radical alteration in the constitution of the tribunal which will give us some degree of fair play, if not all the fair play we desire. In the first year the powers to appoint judges are Argentina, Colombia, Spain, Greece, Norway, the Netherlands, and Turkey, and the deputy-judges are to be appointed by, first of all, Paraguay. I hope the Foreign Secretary will tell us what vital interest Paraguay has and what right, from the point of view of our interests, she has to appoint a judge or a deputy-judge. The other powers are Bolivia, Spain, Roumania, Sweden, Belgium, and Persia. In the second year there are a number of other powers brought in to appoint deputy-judges—Panama, Roumania, Belgium, Luxemburg, and Costa Rica. Again, perhaps, the Foreign Secretary will give us some explanation of the commercial interests of Costa Rica. As regards the appointment of judges in the second year there is a new power introduced—Uruguay. In the third year the countries to appoint judges are, amongst others, Venezuela and Brazil, and the powers to appoint deputy-judges are, amongst others, Santo Domingo and Haiti. It may be pertinent to enquire whether there are many gentlemen in Haiti or Santo Domingo who have given that lifelong study to the question of international law which alone would entitle them to have a seat on such a tribunal as this.

Then we come to the fourth year and one new power is introduced—Peru—and some other new powers are introduced for appointing deputy-judges who have not appeared in the list up to now. Amongst those are Guatemala and Honduras, and in the fifth year we have other powers coming in appointing judges who did not appear before. We have Bulgaria, Chile, Mexico, and Persia. Then, appointing deputy-judges, we have Montenegro, a gallant little State for whom everyone will have the utmost respect for the way in which they have maintained their liberty in the past. As Mr. Gladstone said, living in the rocky mountains of Montenegro they have defended their liberties splendidly, but no one has yet heard that, either by their commercial interests or by their previous history, they are much interested or ought to be entitled to have a voice in an international prize court tribunal. Nicaragua, Cuba, and China also come in for the first time. In the sixth year one or two other countries come in for the first time—Salvador and Ecuador. These are the countries which are to appoint the seven judges who for the

time being may be in a majority on this tribunal which has to deal with British interests. I do not think, so far as my researches have gone, that a proposition of this character was ever put before a British House of Commons before. Here we are for the first time asked to place the enormous maritime interests of this country, both as neutrals and as belligerents, under the control of a tribunal thus constituted, which, without desiring to say anything in the slightest degree disparaging to any of the powers I have named, must inevitably be totally unable to deal with the subjects presented to them. On these grounds I say that this House ought not to sanction, as it does by this bill, the setting up of a court so constituted, and certainly we ought not to pass into law an act which will give British courts all over the world the power and duty to enforce the decrees of a tribunal so constituted.

Mr. PEEL. I beg to second the new clause. I think the House will agree, merely from the recitation of some of the names, that this tribunal is really one of the most grotesque which has been set up, certainly under any convention or even in any country. The representation that we get on this court is ludicrous if you compare it not only with our great naval power and with the fact that we own something like half the shipping of the world, and considering that this court has got to deal with all sorts of intricate mercantile and commercial questions, and has got to decide whether, under various circumstances, merchant vessels have been properly captured or not, or whether compensation shall be paid to them. Really, to say that out of a court of 15 we should only have 1 representative, it is almost impossible to believe that any public body would ever agree to anything of the sort. If you have a court of this kind it is a great thing that its composition should be settled and fixed, but that is the last thing that you have in this court. It is desultory and constantly changing. You have not the slightest security that the same set of men will be dealing with a difficult question which will come before them, and that you will have the best experience you can get from all these countries. Just think of the variety of this court. It is composed first of all of men of every colour. You get white men, black men, yellow men, half-coloured men, and, in fact, men of all colours of the rainbow, and you get men of every sort or kind of experience.

Eight of these judges are supplied by the great powers and the other 7 are on a curious shifting panel of this motley assembly of various other smaller powers and 9 form a quorum, so that it is perfectly possible, under this curious system, that you might have a very few representatives of the great powers and the rest of the quorum shall be made up by these representatives from Guatemala, San

Domingo, and San Salvador. Again, I suppose this court will come to its decisions by a majority. We know that in other places than courts small minorities have remarkable power, and it is quite possible that, in these cases, many of which are most difficult, you will have, indeed you are bound to have, differences of opinion and divisions between the judges of the great powers, and you are likely to have questions affecting our position in time of war decided by one vote of some South American Republic. I am not going into questions as to what the bill does with regard to the principles and the administration of justice and equity, but I do ask the House to observe this. Here you have a number of powers which are going to appoint judges, powers which have been defaulting powers, and some of them bankrupt powers, during the last 40 or 50 years. I ask what are the notions of justice and equity of a power that refuses to pay interest on its national bonds? And yet these are the gentlemen who are going to be put on this international tribunal, and who are to have the same voting power as a judge who comes from this country. After all, what is this wonderful prize court going to do? You have to look at other portions of the bill to see that. To this court appeals will go if not decided in two years, and when they go there, what happens? The decision of that court on the appeals from our prize court are final, and not only that, but when the decree has been given it becomes the duty of every court in this country to enforce the decision. You may have a decision by the supreme court on a question not covered by the Declaration of London, or the existing rules of international law, and it is based on ideas of justice and equity. The judges of this international tribunal might take an entirely different view on questions of justice and equity, and what happens? The courts of this country have to enforce decisions which in their opinion and in the opinion of the prize courts of this country—and everybody knows the reputation they have had in the past—are contrary to justice and equity. If that is so let us have at least a tribunal so composed that we may have some confidence in it. Let it be confined, or largely confined, to the representatives of the great powers—great civilized countries like France and Germany, which we know have great jurists and on whose decisions we would have some sort of reliance, but to say that such questions of justice and equity are to be decided by these coloured gentlemen from the South American Republics is so great a travesty that it is really almost impossible for me to understand how the Foreign Office should ever have consented to such a thing.

This tribunal, so constituted and so remarkably equipped for deciding high legal points, is going to have questions of the most delicate kind, questions of the highest complexity, referred to it. What has

it got to do? It has got to deal with three sets of law. First of all you have got all those rules drawn up under the Declaration of London. Now one question arises at once—namely, whether the commentary of Monsieur Renault on these rules—

Mr. SPEAKER. The discussion of that question would not be in order.

Mr. PEEL. I do not want to go into the rules. I only want to point out that the composition of this court is singularly inefficient for dealing with those delicate questions. I only wish to point out the class of questions this tribunal will have to decide.

Mr. SPEAKER. If there are delicate questions, the honourable member will be able to make that clear without discussing the rules.

Mr. PEEL. I will assume that the House is well aware of the questions which will come up under the Declaration of London. I say, with great respect, that I only wish the country also had as full information on the subject, because then I do not think there would be the slightest question whether this convention should pass. On your suggestion I shall refrain from dealing with, enumerating, or referring to all the particular questions which this court will have to decide, and I shall confine myself entirely to the composition of the court. I think I have shown that it is really an amazing thing that these decisions, on which the life of this country depends in time of war, and that the rules which are going to bind naval commanders in time of war, and on which the supply of food to this country depends in time of war, are to be taken away from our courts, and that their decisions are to be handed over to a foreign tribunal composed in such a manner, and consisting of such extraordinarily incongruous elements, drawn from South American Republics and countries which have no seaboard of their own. Their representatives cannot be seized with the knowledge of prize law which has been acquired by study on the part of those representing countries like our own, which have followed the sea for a thousand years.

The FINANCIAL SECRETARY TO THE TREASURY (Mr. McKINNON Wood). I think it appeared quite clearly from the speeches of the mover and seconder of the amendment that this is really a root and branch amendment which is intended to destroy the whole principle involved in the establishment of an international prize court. That is a point which was settled on the second reading of the naval prize bill, but I think it is necessary to discuss the merits of the objections to this court. The House will appreciate that the intention of the powers which met at this great conference in London was to set up a court which should represent all the nations of the world. That, to the honourable member for Taunton (Mr. Peel) seems a ludicrous position. We will examine whether it is ludicrous or not. That was the intention, and the proposal that was made to give representation

on this court in proportion to maritime interests was not a proposal that commended itself to the great maritime nations represented in London. The House will remember that it was the great maritime nations which drew up the constitution of this court—the nations who alone ought to be represented according to the views of these two honourable members. They said “No, it is not a sound position. We must bring all the nations of the world into this agreement,” and I think I shall be able to show a very strong case for bringing in many of these nations and the absurdity of the argument that they should not be brought in.

Mr. BUTCHER. The right honourable gentleman must not misrepresent me. I did not say that nations outside should have no representation at all. What I proposed is to give them three instead of seven.

Mr. McKINNON WOOD. The interruption is quite irrelevant and has nothing to do with my argument. The argument was that the great maritime powers seriously considered the proposition of dealing with the matter in some such way as that proposed by the honourable member and rejected it. They came to the conclusion that all the powers should have some sort of representation on this tribunal. The general reasons why they came to that conclusion are not reasons which I need labour with the House. If you adopt this amendment you reject the prize court convention; but the object of the amendment is to reject it. It is because honourable members object to an international prize court that they are raising these objections. That is why I think that the objections of the honourable member for Taunton (Mr. Peel) in which he used very strong words such as “travesty,” “fantastic,” and so on are themselves fantastic. It might have occurred to the modesty of the honourable member that the great maritime nations would not have put forward a fantastic court against their own interests. This is not a thing that was contrived by the influence of the smaller powers, but the deliberate decision of the great maritime powers. I think I can leave that point, but I may point out this—that a great many of those nations, though they are not great maritime powers, have a tremendous interest in oversea commerce. No one can deny that the Argentine Republic has an enormous and growing interest in oversea commerce, much to the benefit of Great Britain. The honourable member for York (Mr. Butcher) referred in terms of derision to the composition of the court. He took the first year. I will do the same. It will be composed as to a majority of the eight great maritime powers. Who are the next powers? The Netherlands, an important maritime power; Norway, another; Spain—surely Spain has a right to a voice in this matter; and the Argentine to which I have referred. Surely all these powers have a right to a voice on a question which will affect

them—not because, perhaps, they are great naval powers, but because they are very much interested in the transit of goods oversea. And it is quite a delusion to suppose that because a power may be what is called a minor power it cannot produce a good jurist. Look at the names of some of the men who are members of the permanent Court of Arbitration at The Hague. One is M. Lohman of Holland. M. Gram of Norway is another eminent jurist. Sweden and Greece have each another. Nobody doubts the competence as a jurist of M. Drago who represents the Argentine Republic. Belgium has another eminent international jurist. The whole argument is a fallacy. And then when you come to these minor powers upon whom ridicule has been cast, when it comes to an international agreement, I do not see why ridicule should be cast upon any power or upon the colour of its people.

Mr. PEEL. I did not cast ridicule on their colour. I merely said that these gentlemen were not highly educated on international law.

Mr. MCKINNON WOOD. The honourable gentleman said they represented all the colours of the rainbow. It is not good ridicule, but it is ridicule. It does not follow that they are obliged to appoint any jurist other than they chose. They are not obliged to appoint a jurist of their own if they have not got one. When you come to these deputy judges honourable members can see that these deputy judges will only act in the absence of the judge, and therefore the whole of that argument is a perfectly trivial argument and amounts to nothing at all. I would like to direct attention to one other consideration. The whole objection is to an international prize court. What is the practical alternative? It is to have the case considered in the court of the belligerent which has done the damage. Is the alternative before the House, the international prize court to whom you only apply if you are dissatisfied with the decision of the belligerent's court, a disadvantage? I cannot imagine how any man who will look fairly at the subject for a moment will allege that it is. How can it be a disadvantage to us if, after we have gone into the court of some foreign country and got a decision against us, we have an appeal to an international court, and, mark you, by the constitution of the court, a court chiefly composed of neutrals, and therefore perfectly independent and able to give an unbiased judgment on the matter? The division on this amendment will decide an important question, whether or not the international agreement that sets up an international prize court is to be ratified by this country or not, whether we are going to go back to a state of affairs in regard to prizes which everybody who knows anything of the subject admits to be as unsatisfactory as can be, or are going to make the great advance which this international agreement will bring about.

SIR ROBERT FINLAY. If this bill is to be carried I think it ought to be advocated in speeches of a somewhat different tenour from that to which we have just listened. There is absolutely nothing in the speeches of my honourable friends who moved and seconded this amendment to lead to the sort of treatment which the right honourable gentleman thought fit to extend to them. He says that their objections are trivial, but he had very little to say in justification of that attitude, and he seems to think that any opposition to this bill hardly requires any answer at all. It is to be carried through, and any discussion is a mere empty formality. The real thing is the voting which is to take place. The right honourable gentleman has said that this court was constituted in virtue of the consent among the nations, that what was desirable was a convention or court representing all the nations of the world. If that was the aim, surely, in a body of the kind, some adequate regard should have been paid in the matter of representation to the magnitude of the interests which each country had at stake. The principle has been neglected in the composition of this tribunal. The right honourable gentleman put it as if this court was to be a sort of little parliament representing all the nations of the world. If that were the proper idea the interests of the nations of the world ought to be measured and considered in the composition of the court. But that is not the idea which ought to have been applied by those who were engaged in this convention. What they were engaged in considering was a court. They were not engaged in considering a parliament, and what they had to endeavour to secure was that they should have a court of thoroughly good composition whose judgments would command the confidence of the civilised world. No one can say of this court that its judgment would command the confidence of the world. The right honourable gentleman repeated the charge which he made on a former occasion that the real objection was to the international court of appeal. A more unfounded charge was never made.

MR. MCKINNON WOOD. Did you hear the speech of the honourable and learned member who moved the amendment?

SIR R. FINLAY. I heard a good deal of it, and I heard nothing to justify what the right honourable gentleman said.

MR. MCKINNON WOOD. The right honourable gentleman will excuse me. I referred to the opening sentence of the honourable and learned member's speech, which the right honourable gentleman did not hear.

SIR R. FINLAY. I did not hear the opening of the speech, but I should be very much surprised if it expressed a general objection to the principle of a court of international appeal. I would respectfully point out to the right honourable gentleman that the real question

to which he ought to address himself is the composition of this court, and whether it is adequate to discharge its high functions, in such a manner as to give satisfaction to this country and the other countries of the world. I venture to say that the wit of man could not have devised a worse tribunal for this purpose than the tribunal which is constituted by this bill; and its bad composition is largely explained by the revelation which the right honourable gentleman has made to this effect, that what we are considering is not how to constitute a good court composed of eminent jurists whose decision would command respect, but to have a representation of all the countries of the world. That is not the way to constitute a court that would be competent to deal with points of detail and with questions of very great difficulty and of very great complexity. The principle of the composition of this court is absolutely vicious. It is a great deal too large. Fifteen judges is an absurd number. This amendment is at all events a step in the right direction. It is extravagant to suppose that you could get 15 jurists of established reputation, thoroughly cognisant of international law, and competent to deal with such questions. But, more than that, the court is to be fluctuating in its composition, 9 members are to constitute a quorum, and you do not know which of the 9 will be sitting, and a court of that kind is not the sort of court you want to deal with such questions. You want a court constant in its composition, and much smaller in size, for this reason, that as soon as you have a large body it is impossible to suppose that its members will all be of the same standing that you could secure if it were more limited in its numbers.

What will come before this court? I am not going to review the composition of the court, as my honourable and learned friend the member for York has already done that, but what I want to point out is this: You will have on this court a balance of 7 judges appointed in rotation by the minor powers. Of the whole court of 15, 8 will be appointed by the great powers and 7 by the minor powers. Some great question of policy comes before that court involving vital interests of this country as against some other maritime power, it may be. When the question is going to be decided there is some difference of opinion among the great powers on the point. Some of the great powers may think with us. The interests of others might be in an opposite direction. Will there be any confidence with this floating balance of 7 people appointed from among the minor powers, that there will not be a vast amount of intrigue and influence brought to bear to secure the votes of these powers in one way or other? If it had been desired to set up a court whose decision would not command confidence, you could not have set to work in a more effectual way than by creating such a tribunal as that which

is embodied in this convention. The blunder was made when you had the true model before your eyes. The right honourable gentleman said that there was an objection to the principle of international arbitration and an international court of appeal. We have before our eyes The Hague tribunal of arbitration, and the admirable work it has done. How is it that The Hague tribunal has worked so well? It is because it is not too large in composition. It has consisted usually of 5 members, and on that tribunal you have secured the services of jurists of acknowledged eminence. You ought to have followed that model, and provided in this convention for a tribunal of relatively small numbers, and taken security that it should consist of men whose position as jurists is such as to command the confidence of the whole world. Although the amendment is an improvement of the bill, it leaves the court too large. It reduces the representatives of the minor powers to 3, and that would be a great improvement. But, in my view, even on the model of The Hague tribunal, the court ought to consist of 5 members, and you ought to have on that court only men who are competent to do the work. You do not want a sort of convention fluctuating between the idea of a court and a sort of parliament of the nations. When you have two objects in view, the result is that the work is badly done. I trust the House will pause before it lends its sanction to submitting our most vital interests to the final decision of such a tribunal as this.

The SECRETARY OF STATE FOR FOREIGN AFFAIRS (Sir Edward Grey). The amendment before the House is that the court should be reduced from 15 to 11 members. The right honourable and learned gentleman opposite (Sir R. Finlay) has supported the amendment by arguing that the court ought to be composed of 5 persons. I should doubt whether that is very relevant to the amendment before the House; but whether he argues for 5 members or the honourable and learned member for York argues for 11, either of those amendments and views are really fatal to any prize court convention at all. Take the argument of the honourable and learned member for York, who demurred to the construction put on his speech by my right honourable friend (Mr. McKinnon Wood). But really the construction of my right honourable friend was not an unfair one, and the same construction applies to the honourable member (Mr. Peel) who supported him. He took the particular cases of individual countries, and he asked with regard to those countries, What knowledge have they of international law, what interests are they likely to have in the questions which come before the court? If that is an argument at all it is an argument for saying that certain countries ought to be ruled out of the possibility of any representation at all. You can only get a prize court convention by international agreement, and you

will not get agreement between any large number of powers at any Hague conference to set up a court which draws such an invidious distinction as to rule out individual nations of the world from any possibility of being represented upon even the minority. I doubt whether you would get a single other nation to vote with you. Even if all that was said against this court was true, and I do not for a moment admit it is, but supposing it were, it would still be a court on which the majority was composed of neutrals, and it would be more favourable to commercial shipping which has grievances than a court solely composed of the belligerent, and which is necessarily the court of somebody who is judge in his own court. That is really what brought the nations to meet together at The Hague to devise the prize court convention. The decisions of the court of the belligerent are bound to be unsatisfactory in commercial cases. If they go in his favour of course he is satisfied, but they do not, and, as a rule they do not go in favour of the plaintiff unless a very strong case is made out. You can not expect the party aggrieved to feel confidence with the judgment of the court of the belligerent. From that court at present there is no appeal. Nations may admit an appeal in a particular case where it arises now from a belligerent court to The Hague tribunal, but you can only bring a case before The Hague tribunal by agreement between the belligerent and the neutral who is complainant that there shall be an appeal in that particular case. Once a case has arisen and a belligerent court has decided, and we found this in dealing with the Russian Government, you can not get an appeal. The only way you can get an appeal from a belligerent court to an impartial court, in which the belligerent is not to be judge in his own case, is by a prize court convention, to which the nations agreed in advance that they will refer cases. That is a great gain on existing practice. The right honourable and learned gentleman (Sir R. Finlay) said that he is not opposed to the principle of arbitration, but that it is to the number he is opposed, and to the only way by which the principle can be applied. The whole thing threshed out at The Hague convention was this, and in no other way than this can you get an agreement to have an international prize court. The great powers have the majority on this court. They stipulated for that. The representation which is given to the whole of the powers of the world outside the powers named in article 15 of the prize court convention is less than is given to the few powers named in article 15, precisely because the interests of those powers are considered to be greatest in the question. That is not all. Whatever honourable members may argue with regard to admitting the smaller powers to this court, I think they must admit you can not have an international prize convention unless you have agreement amongst the great powers. We should have got no agreement at The

Hague conference except on the lines of this prize court convention. They took the risks of unfavourable decisions. They are content with a tribunal assuring them of a majority, but giving a representation of 7 to the other powers, you will not get their consent to anything else than that, and if you do not get the consent of the great powers you will not have a prize court convention at all. The right honourable and learned gentleman has really been arguing against the whole prize court convention by bringing forward counsels of perfection. He wants to have a tribunal whose decisions will, he says, command the consent of the civilised world, and for that tribunal he wants to have 5 persons only, of such distinction and such eminence that their decisions will command the consent of the whole civilised world. That means a court on which you have 5 powers represented.

SIR R. FINLAY. Why?

SIR E. GREY. You can not have more than five in a court in which you have five.

SIR R. FINLAY. They are not representatives, they are judges. Several powers can agree upon a judge, and to treat them as representatives is, I submit, a complete misconception.

SIR E. GREY. I quite see the point, but they must be drawn from some nation. I do not speak of them as representing a particular nation on the tribunal, but representing a nation in the sense of being drawn from it. As a matter of fact, the majority will always be neutrals, and in that sense not representative of any nation in any case to be tried before the court, but five can only be drawn from five nations. If you have a much more limited court, which the right honourable gentleman recommends, you have one composed of individuals, however distinguished, drawn from a very limited field, and on which the bulk of the smaller powers of the world can have no chance of representation. However eminent those individuals may be, you will have a court that, which by its prestige and general competence, will command the confidence of the civilized world. You must have a court drawn from a comparatively wide area, if it is to be such that its decisions are to command universal assent, and if it is to be such as to get the assent of the nations to a prize court. Our representatives went into this at The Hague conference, and it was discussed with all the great powers exhaustively. We were all in favour, for the reasons which I have stated, for something which would put an end to the really intolerable condition of affairs under which you have no appeal from the decision of the prize court of the belligerents themselves. And, after discussion amongst the nations of the world, this was arrived at by agreement between them. This is, I believe, the best tribunal to which you can get international assent, and without which you can have no tribunal at all. I would

urge the House to reject the comparatively small consideration put forward of reducing the court from 15 to 11, but which, although it is comparatively slight, would absolutely upset the agreement come to at The Hague conference, and be fatal to the establishment of a prize court.

SIR ALFRED CRIPPS. There are two points dealt with by the right honourable gentleman (Sir E. Grey) to which I should like to refer at once. In the first place, he has taken this argument, which I suggest as a very bad one, in a matter of this kind. He said if you can not get a convention, this is the substance of it, with a court that is satisfactory, it is better to have a convention whatever the constitution of the court may be.

SIR E. GREY. I did not say the court was not satisfactory. I considered it was satisfactory. I was arguing against the possibility of devising a more satisfactory court. It is not fair to say that I did not say it was satisfactory.

SIR A. CRIPPS. I do not want to draw an unfair inference, but I put the substance of his argument as that. You have a convention which many of us indeed think has constituted a very unsatisfactory court, and the question we are now raising is as to the constitution of that court. I do not think it is an answer to that argument to say that you are bound to take the court because the convention has agreed to it, and that if you do not accept this court that you can not, for the moment at any rate, have an international prize court at all. I think that is a wrong way of looking at it, as I shall point out by and by. We are bound at the outset, as the greatest maritime nation, with the greatest interests, both of commerce and of war, not to submit our interests to a court which in our view is not satisfactory, and can not therefore be trusted. I start from that basis, and may I deal with the other argument which the right honourable gentleman addressed to the House. His argument was that the rights of neutrals would be better protected by the international tribunal than by the tribunal of a particular belligerent. I say that is not at all right so far as we are concerned. They may in some instances no doubt be right. Take the position of England and the English courts. On every single point our law as we apply it is more favourable to neutrals than the law to be applied by the international court. I can not go into the matter in detail, but in regard to food-stuffs, the question of contraband, the conversion of merchantmen during voyage into war vessels, and the sinking of neutrals; in short, in regard to every question with which the international court will have to deal, the law administered by this international court will be less favourable to neutrals than the law administered at the present time by English courts on English principles. I challenge anybody

to make any answer to that allegation. Our maritime law is the admiration of the civilised world.

Mr. McKINNON WOOD. The statement of the honourable and learned member may be true as regards the interests of foreigners, but British ships appear not before British prize courts, but before foreign prize courts. The important question for British ship-owners is whether the practice of foreign prize courts is better.

SIR A. CRIPPS. There is a three-fold answer to that. In my view there has always been a misapprehension in the mind of the right honourable gentleman on this point. As a matter of fact and practice, the influence of English decisions has been so immeasurably greater than the decision of any other prize courts that the gradual tendency has been even for belligerents to approach our system. That is a most important fact. There is another point in regard to which there has always been misapprehension. When you get an international code laid down by various decisions, it will override what I may call the municipal code of the various countries represented on the international court. That is an extremely serious matter so far as we are concerned. It means that our maritime law, which is undoubtedly most favourable to neutrals, and it is greatly to our honour that it is so, will be superseded by a harsher code, and we shall be compelled to put that harsher code in force against neutrals, although we consider it inconsistent with justice and equity. We shall have to do that in our own courts, because after the international prize court has given its decision, that decision will be sent to this country, and it is part of the system of an international court that its decrees shall be enforced in this country. The right honourable gentleman is under a misapprehension if he gathered from the speeches of the mover and seconder of the amendment that they were directed against the constitution of an international prize court. I agree that if you could get a properly constituted court and lay down a satisfactory code to be administered by that court it would undoubtedly be an advantage to all countries, as far as maritime matters are concerned, to have an international code and an international court. No court ought to be constituted on the doctrine of representation as against the doctrine of the efficiency of its members. In this country we have always done all we could to prevent our judges being elected as representatives; we have always contended that they should be jurists, and as jurists approach every question from an impartial and juridical point of view. There has been a difference in that respect between our courts and the courts in America. In no country in the civilised world is there more respect for the courts than there is in the United Kingdom, the reason being that our judges represent no one, but are chosen for

their great juridical knowledge and act impartially as regards all interests.

MR. KING. Ridley.

SIR A. CRIPPS. I do not know whether that ought to be withdrawn?

MR. SPEAKER. I think that the honourable member made an offensive suggestion respecting one of His Majesty's judges. I do not know if the honourable member has anything to say?

MR. KING. I withdraw unreservedly. I regret I made any remark.

SIR A. CRIPPS. As regards the extremely important question of the constitution of this court, I do not want to reiterate or to attempt to reinforce what has been said. No one who has the least experience of courts can conceive that you can have an efficient court consisting of 15 members. In such a court every member shirks responsibility. You want a sufficiently small court that every member can appreciate the responsibility that is thrown upon him individually. That is a crucial matter in the constitution of a court of this kind. The honourable and learned member for York (Mr. Butcher) does not dissent from the proposition that the smaller powers must be consulted as regards the constitution of the court. What he said was—and it has not been answered—that, taking the court as at present proposed, 7 members coming from the smaller powers and 9 being a quorum, in most important cases decisions binding all maritime law in the future might be given by those who have no interest themselves in these great questions. There is no disputing the fact that, as at present constituted, without calling in question particular countries, you might have a decision of the most vital interest to us as a maritime country, which would bind us for so long as this court is in operation—I assume we shall follow the code which the court will lay down—and that decision might be given by the representatives of countries which have no navy and no commerce, such as Luxemburg or a large number of the smaller South American Republics, for whom one has every respect in one way, but at whose discretion one has never put the rights of humanity or the rights of this country.

It would not be in order on this amendment to deal with the special points with which this court will have to deal, but there are two general considerations which can not be put out of sight when dealing with the constitution. The first is that you will get a maritime code which may be most disastrous to the interests of this country: because I presume that when that maritime code has once been laid down it will be the duty of the First Lord of the Admiralty and others who have to deal with our navy to give instructions in accordance with that code. In many respects that would be a most disastrous thing to do. Secondly, I know that the honourable and

learned gentleman opposite has a subsequent amendment upon that point. It is an extremely serious thing when you consider that there may be a conflict between this maritime court and our own municipal courts. Are we going to put upon these courts the enforcement of principles from which for centuries we have dissented, and dissented, not only on selfish grounds and when they were advantageous to us, but on far wider grounds. As neutrals we have taken the most lenient views: we have taken the widest view in order that the commerce of the world in the case of war should be interfered with as little as possible. I am one of those who think that food-stuffs ought to be free imports under all conditions. It would be to our interest as a great power, but when you go in the other direction, in a reactionary way, when you adopt word for word, really the principles of Russia as against our own on the question of neutral vessels, then we should take the greatest care that the court administering these great duties and having this great responsibility should be constituted in the best possible manner. It is impossible to say that the court constituted as it is by this convention should be satisfactory—at any rate, to those who are used to the courts of this country, our own method of procedure, and our own important position.

MR. KING.¹ The whole argument of the honourable and learned gentleman the member for South Bucks (Sir A. Cripps) seemed to proceed on the supposition that we, as neutrals, will be under the new court and new conditions in a very much worse position than we are at present.

SIR A. CRIPPS. I said "all neutrals."

MR. KING. "All neutrals" would include ourselves; therefore we, when neutrals, will be in a very much worse position than we are at present. I hope I have the honourable and learned gentleman's assent that I am not——

SIR A. CRIPPS. I will not repeat my arguments, but I can not assent to that.

MR. KING. At any rate, the whole basis of the honourable and learned gentleman's argument has been on the supposition that we are neutrals. I would like to remind the House of the second reading debate. The whole opposition to the bill then was on the supposition that it would damage us when we are belligerents. In the course of that debate we were frequently told by learned members on both sides that if it were only the question of considering our position when we were neutrals the bill would be satisfactory. I remember in particular the very long and learned argument from the honourable and learned gentleman (Mr. Leslie Scott), an argu-

¹ Liberal.

ment based on the very considerable practice that he has in these matters in the law courts. He distinctly laid it down that if we were only required to contemplate Great Britain as a neutral power in future wars this bill would be found satisfactory. If he and other members on the opposite side of the House used that argument on the second reading, what becomes of the argument that we have heard from the honourable and learned gentleman who has just sat down? The real fact, of course, is that we shall be in a much better position as neutrals than we have ever been before. For one thing, we shall know exactly where we are. We shall get the same treatment from all countries. The honourable and learned gentleman (Sir A. Cripps) said we as neutrals should be very much worse off, and he referred incidentally to the action of Russia. Let me remind him of the cases of the *Knight Commander* and the *Oldhamia*, cases which I have no doubt he and most members of this House know perfectly well, and which were most unsatisfactory to us. These things occurred in the course of a war in which we were neutrals. These cases could not possibly arise under the present circumstances.

Let me call the attention of the House to a very important matter which has not been referred to in this debate. I refer to the actual wording of article 15 of the first schedule. This seems to me to remove a great deal of misconception when it is properly understood. It reads:

The judges and deputy-judges appointed by the other contracting powers sit by rota, as shown in the table annexed to the present convention; their duties may be performed successively by the same person. The same judge may be appointed by several of the said powers.

That contemplates the notion that when powers like Salvador, Honduras, and Ecuador and other distant powers have to appoint a judge or deputy-judge they will appoint, not some lawyer from their own State, but some man of recognised European and international ability, who will be easily accessible to sit at The Hague. Such has already been the practice in certain arbitrations and other cases that have been raised at The Hague. It is to raise a prejudice against this bill that it is supposed that we shall have men, yellow, black, and other colours, as suggested by the honourable gentleman the member for Tauton (Mr. W. Peel), and it seems to me quite beside the mark. It raises entirely wrong and false prejudices. Why should men of different colour to ourselves be less capable of acting just as justly and as capably as men of like colour to ourselves? Secondly, and more important, it entirely ignores what is undoubtedly going to be the practice under this bill when it becomes law, and that is that the prize court judges will be selected. Again and again undoubtedly the same men will be selected by different powers,

because of their world-wide reputation as jurists, and because of their ability for the position. The more I go into this bill the more I feel that it is a just and great measure, and that the criticisms which have been directed against it this afternoon have utterly broken down.

Mr. DUKE. The honourable member who has just spoken is in the happy position of being able to contemplate this country in a state of permanent neutrality. If that were likely to be the case, one would not, perhaps, feel the same concern about the court that it is to regulate these maritime laws, because all the questions that would arise would be in the main commercial questions; and probably after a lapse of years, if not in the first instance, by some reasonable adjustment between the powers, we should arrive at a state of normal justice in dealing with these questions. But the tribunal which is to sit is not to sit in a state which will by any means be that of permanent neutrality for this country. It is not only to regulate the conduct of British navies in time of war, but it is to regulate the maritime law for this country so long as it exists. This tribunal which is to be set up is not only to be an administrative tribunal, but a legislative tribunal. Outside of matters which are settled by the Declaration of London in regard to naval warfare and naval prizes, there is a considerable area of contentious questions which will remain open, because the interests of this country and the policy of this country are so diametrically opposed to the interests of continental powers and other foreign powers, and the views of policy of those various powers, that we could not come to a settlement. What is to become of those questions? What becomes of open questions? This tribunal to be set up is to deal with them in the manner it thinks just and equitable, and the tribunal under the bill having laid down its decision of what it thinks just and equitable on these questions, the prize courts of this country are to enforce it. That is a position it seems to me impossible to contemplate with indifference, and one has to look at the interests affected and the nature of the tribunal to deal with them, and the laws which that tribunal has to administer and the position of this country in respect to them. In regard to these questions—I am not speaking of the settled questions covered by the Declaration of London, some of them not decided very favourably to the past policy of this country—I am speaking of the unsettled questions. Those questions all the experts in naval warfare tell us are questions upon which the policy of this country has been guided by a greater experience in maritime warfare than that of any other power. Our prize law has not been law settled by Parliament upon its view of what was just and right, or settled by students or by casual discussions. Our prize law was worked out by Lord Stowell and

other eminent men during a period in which this country was fighting for its existence, and there is no rule in which our law differs from continental law which does not spring from the British policy embodied in our law—policy which in the long run would work for the maintenance of our position. Apparently it is regarded as a desirable thing that this country, having held its own in the past in face of the tremendous maritime difficulties which it had to face, having attained an undoubted maritime supremacy, being at present confronted with very serious competitors, should put out of the hands of the British courts and of the British Parliament the decision of what is right in maritime law, and should leave it to a body which can not be properly described as a court but is rather a delegation of the powers. That is a way we should not consent to deal with the most vital British interests. With regard to the constitution of the court, if it was a court of the nature of The Hague Tribunal, these great interests might at some time come to be regarded as subordinate to the interests of international peace. But we are not upon the threshold, so far as anyone can see, of international peace, yet we are to frame great administrative acts which are prepared for a state of international war for which we can not hope to escape ourselves.

In that state of the matter is it reasonable that Parliament should consent to substitute for judges, and for a code which at any rate has worked with the very highest practical benefit to this country, judges who are not in truth judges, but who are delegates, and delegates not selected, as far as we are aware, with any view to their particular qualifications, with the tremendous responsibility to be imposed upon them, not in an international sense selected by the various nations of the world, but who are nominated as judges by the various countries with a view to what they imagine is their own interest? I do not imagine any continental power is going to select a judge that takes the British view upon this question. Would anyone say that any of the nations of the Continent would take the British view as to whether it is just and equitable to convert a merchantman upon the high seas into a ship of war? That is the kind of question that will have to be dealt with. How is it possible there should be confidence in the decisions of powers who take an adverse view to ours upon that matter? I say nothing about the particular powers who are to nominate judges: observations will occur to everybody on reading that list of a power which it is not necessary to name. I wonder who is there when dealing with a matter, say, of commercial interest, who would find it difficult to say the direction in which this power would choose its judges in such a vital matter? But leaving apart questions of the particular nominators or the security you would

have for anything in the nature of a judicial tribunal outside the names of those powers, neighbours of our own, in whose desire to do the best they can do we are all agreed, outside of these all you would provide is that 15 judges should be nominated by a very great body of the nations of the world, and there you leave the matter. To my mind there is no urgent national necessity which warrants this country at the present time for stepping out of the proved security of its own institutions in matters of prize law to the insecurity and peril of this future in which it is to be at the mercy of its critics and competitors. With regard to this subject and to the position and magnitude of the tribunal, which is to be a kind of exaggerated jury, with no qualification for its disinterestedness, I venture to submit to the House we are not at present in a position of certainty which justifies us in making this great new departure. We are not certain with regard to the law to be administered and the judges to be ascertained. We are not ready to leave the administration of the law to a body of unascertained persons sitting with very little control, so far as we are concerned: If it is a question of retaining this international court because it is the best that we can have, then, for my own part, I think that, highly desirable as it is in view of the peace of the world that every possible question should be submitted to arbitration, we are not justified in submitting to this tribunal the great questions which will be in issue when this court is set up.

MR. STUART-WORTLEY.¹ The right honourable gentleman the Secretary of State for Foreign Affairs seems to be very hard to please. I think it is possible to meet any serious objection he puts forward to this clause. It is quite possible to any man reading this clause to propose amendments, so that instead of saying "the prize court shall be composed of 11 judges only, of whom 8 shall be appointed," and so on, you might say a smaller number of judges, or shall consist of jurists of repute, if we should reach the stage at which such an amendment can be moved. I do not know whether the House would give leave to my honourable and learned friend to withdraw the clause as it stands and move it in an amended form. It is quite clear by some such formula as that we could meet the difficulty put forward by the right honourable gentleman. It has been said that you can not by invidious distinctions rule out the representatives of smaller powers. The answer to that argument is that you have already set up those invidious distinctions in the schedule and the list of contributory powers, and it is too late to say that you could not exclude some of the powers brought in to participate. If you have a court of this magnitude it will not be a tribunal at all, but a mere international conference for the alteration and not for the declaration

¹ Conservative.

of the law. If we are to have these smaller powers, why not have Tunis? I have known a conference where Tunis was represented. Why do we have Luxemburg? Is there any doubt about the way the representative of Luxemburg will vote? If we are to have an international tribunal at all it is open to us to ask in the case of the great British decisions of the early part of the nineteenth century and the end of the eighteenth century how can it be shown that those decisions have been against neutrals. In what way can it be shown that this court can give any decisions in favour of neutrals which are more favourable than the tendency of those decisions? In what way can it be shown that the decisions of this tribunal will not consistently be worse to the interests of this country, which depends upon foreign supplies for food and raw materials, and which may be acting on its own defence against foreign naval powers? Those are my objections to this tribunal as it stands. The principle of representation is radically at fault. The body you are setting up will not be judicial, and it will not even be a tribunal, but a mere conference. Its decisions will be inspired and influenced by the principle not of reasoning, and still less of experience, because the inexperienced powers will be in the majority; it will be inspired by a principle which I may call the principle of gravitation. Its sympathies, and eventually its decisions, will be attracted to and gravitate around the interests of the powers which are the most active and aggressive. I do not speak without experience, and my experience has been that where you have international conferences the general result is to level down both the sense and justice of any international law you may be seeking to amend, and to level it down to the standard of the least experienced, and by no means to obtain a higher standard of justice.

Mr. HUNT. The argument of the right honourable gentleman opposite appeared to be that you must have this particular bill, otherwise foreign countries would not agree to have the convention at all. I think it would have been very much better to have had no prize bill at all than have one which will do a great deal of harm. We have a right to have more than 1 representative out of 15, considering that we own half the shipping of the world, and yet we have only got this one vote, and our great colonies, which, after all, have Governments of their own and great seaboard and a very considerable amount of commerce, have no representation at all. It can not be right to select Luxemburg with one vote because it has only a few hundred thousand inhabitants, and it is situated within the German Zollverein. How is she going to vote? There can hardly be any doubt about that. Then there is the place called Costa Rica and Switzerland. Neither of them have a seaboard, and they have

got no ships, and yet you have islands like Australia and New Zealand and enormous countries like Canada with no representation at all. I submit to the right honourable gentleman that he would have done much better to have disagreed with the powers, and said "No, if you can not agree to give us fair representation in accordance with our population and our shipping, we will not have anything to do with the convention at all." Surely the right honourable gentleman has given his country away. We were fighting for our lives hundreds of years ago, and does the right honourable gentleman think for a moment that this country would have stood a thing of this sort? In my opinion they would either have been hung or sent to a lunatic asylum. It certainly seems to me that the right honourable gentleman has no business to give his country away, and our colonies and shipping as well, without this subject going before the people of this country. I hope that honourable gentlemen opposite will just for once in a way think first of their own country and afterwards of other countries.

MR. FALLE.¹ I want to say a few words upon the composition of this tribunal, which appears to me to be nothing less than an outrage. Remember that some of these countries which are going to appoint judges to this tribunal are not allowed to judge white strangers within their gates. This is a question of life and death to a great country. Several of the nations included—I need not mention them by name—are not allowed to judge in the very simplest matter which may arise in the case of a white man in their country. The representatives of such countries are to be put on the courts which are to decide matters of life and death to this country and this Empire. The right honourable gentleman has spoken of Luxemburg and the kind of judge who will be appointed to represent that country. There is no question as to the sympathies of Luxemburg, because that country would be practically forced to appoint a judge with German sympathies. Can any man say that the so-called Republic of Panama would appoint anyone who was not in sympathy with American ideas and the Monroe Doctrine? If such States as I have mentioned, which are not in any sense independent, are to appoint judges, why should such great independent countries like Canada, Australia, and South Africa be altogether left outside the scope of this prize bill? The right honourable gentleman the Financial Secretary has said that all powers should have a right to be on the tribunal and the Foreign Secretary said you can not rule out individual nations. Then why have individual nations been ruled out? I do not profess to know as much geography as the right honourable gentleman opposite, but I have heard of Abyssinia. It is an independent country, but it is to have no vote, while Haiti is to have

¹ Conservative.

a vote. I have also heard of His Majesty of Afghanistan. He also is to have no vote. There is the Sultan of Oman and Muscat, but he is to have nothing to say. The smaller nations on the court are not obliged to appoint their own countrymen. They are practically under the dominion or in the scope of the Triple Alliance, and it appears to me they will appoint judges to please nations whom they want to please, and upon whom their existence practically depends. You can not see Luxemburg, Panama, Haiti, and Santo Domingo appointing judges in whom we can have any confidence whatever, and for those reasons I hope this will go to a division, in which case I shall be in the lobby against the clause.

COLONEL GREIG.¹ The honourable member who has just spoken referred to the omission of the great dominions and colonies of this Empire. May I remind him that at the recent imperial conference the code this court is going to administer was brought up and the whole of the colonies and dominions with a single exception approved of the Declaration of London and obviously approved of the composition of the court which is to administer that code. Sir Wilfrid Laurier—

Mr. FALLE. Yes, he has gone.

Mr. SPEAKER. We are not discussing the Declaration of London.

COLONEL GREIG. The composition of the court and the law the court is to administer was before the premiers at that time, and they approved of the court and the manner in which it was to be constituted. This court is not going to be put in the place of the national courts of the different countries. It is a court of appeal. We have now only the national courts. If we are a neutral we have to go to the prize court of the belligerents. Is it not much more likely that a common court with a large proportion of neutrals upon it would give decisions in favour of neutrals than do the national courts at the present time? An observation has come from honourable gentlemen opposite that the law the court is going to administer will be less favourable to us on the whole, but if you look at the code that has been adopted for it you will find our view of that law has in most cases been adopted. It is only in one or two outstanding matters that our view has not on the whole been carried. Is it not more likely in a case where justice and equity is to be the rule that a court composed very largely of neutrals would give a decision in favour of neutrals? It does not seem to have been recognised that upon this court, as well as the judges who are to take part in the decision, article 18 gives this right:

The belligerent captor is entitled to appoint a naval officer of high rank to sit as assessor. * * * A neutral power which is a party to the proceedings, or the subject or citizen of which is a party, has the same right of appointment.

¹ Liberal.

I submit, therefore, that on the whole the court as it is to be constituted is far more likely to give decisions in favour of our views of neutral rights, just the same as if you look at the code you will find that in the main our view of those subjects has been adopted.

LORD CHARLES BERESFORD. The right honourable gentleman opposite seemed to think that on this side of the House there was an objection to an international court. There is no objection on this side of the House to an international court. Personally, I think it would be a good thing if the court was fair, but I do not think this court, as it is proposed to be constituted, is a fair court to us, looking at the predominant interests we have at sea compared with other countries. There is another point. Nearly every single point or every point of importance to British interests which was produced at the conference in London to determine the code was hardly discussed or was thrown over by the foreign delegates. First of all, it handed the whole of our British maritime interests to a foreign court. The point of importance, of course, from the naval officer's point of view is that it does not forbid privateering on the high seas, and that will amount to piracy.

Mr. McKINNON WOOD. The Declaration of Paris did that.

LORD C. BERESFORD. When this question was brought before the conference and the convention, the foreign delegates refused even to discuss it. It is an important point to us. I want to give my vote for this amendment, because those who have thought over this question object to the constitution of the court on the ground that it is not a court at all parallel to our interests at sea, which are predominant over those of other nations; that they have got no code, and whenever any subjects are presented at conference in which British interests are concerned the conference either will not discuss them, or will vote in a direction totally adverse to British interests. That is why I give my vote for the amendment.

Question put, "That the clause be now read a second time."

The House divided: Ayes, 81; noes, 151.

Part I. Courts and Officers. The Prize Court in England.

Clause 1. (The High Court.)

(1) The high court shall, without special warrant, be a prize court, and shall, on the high seas, and throughout His Majesty's dominions, and in every place where His Majesty has jurisdiction, have all such jurisdiction as the High Court of Admiralty possessed when acting as a prize court, and generally have jurisdiction to determine all questions as to the validity of the capture of a ship or goods, the

legality of the destruction of a captured ship or goods, and as to the payment of compensation in respect of such a capture or destruction.

For the purposes of this act the expression "capture" shall include seizure for the purpose of the detention, requisition, or destruction of any ship or goods which, but for any convention, would be liable to condemnation, and the expressions "captured" and "taken as prize" shall be construed accordingly, and where any ship or goods have been so seized the court may make an order for the detention, requisition, or destruction of the ship or goods and for the payment of compensation in respect thereof.

(2) Subject to rules of court, all causes and matters within the jurisdiction of the high court as a prize court shall be assigned to the probate, divorce, and admiralty division of the court.

Amendments made: In sub-section (1), leave out the words "requisition or destruction."

Leave out the word "thereof," and insert instead thereof the words "of any such ship or goods which have been requisitioned or destroyed." [Sir. J. Simon.]

Clause 12. (Rules of Court.)

His Majesty in Council may make rules of court for regulating, subject to the provisions of this act, the procedure and practice of the supreme prize court and of the prize courts within the meaning of this act, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and expenses to be allowed to the practitioners therein.

Mr. ATHERLEY-JONES. I beg to move, to leave out the words "and of the practitioners therein" ["the officers thereof, and of the practitioners therein"].

I do not understand the words "and of the practitioners therein." It may be a very small point and the words may be innocuous, but I know of no precedent for the introduction of such words, which might be used to the detriment of the freedom of the bar and of solicitors. It may be a very small or a very large matter according to how it is used. Unless we have some explanation from the Government as to what is meant by these words I shall be disposed to press the amendment.

Mr. PEEL. I beg to second the amendment.

The SOLICITOR-GENERAL (Sir J. Simon).¹ My honourable and learned friend says that he is unable to find a precedent for the words he moves to omit, but if he will look at the printed copy

¹ Liberal.

of the bill, at the very clause on which he moves this amendment, he will see the marginal note refers to 57 and 58 Victoria, chap. 39, s. 3. If he will look at that statute he will see it is the prize courts act of 1894. The words which are now criticised by his amendment are words which are reproduced from the prize courts act of 1894, which in its turn, I believe, reproduces the statute of 27 and 28 Victoria. I have the words of the existing law before me, and I will read them. The present law runs as follows:

Her Majesty the Queen in Council may make rules of court for regulating, subject to the provisions of the naval prize act, 1864, and this act, the procedure and practice of prize courts within the meaning of that act, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and expenses to be allowed to the practitioners therein.

So far as I am able to check them, I do not ascertain any distinction between what we propose to put in this consolidating act and what has stood unchallenged on the statute book since the last act was passed.

MR. ATHERLEY-JONES. The Solicitor-General can not have looked at the matter with great care, because there are no words in the act he has quoted as to the conduct of practitioners in court.

SIR J. SIMON. If the honourable and learned member looks at my copy of the act he will see that the conduct of practitioners in court are the words in the existing law.

MR. BUTCHER. The fact that these words are in the existing law is not conclusive on this question. We are accustomed to alter laws when we think them bad, and I have heard no defence from the Solicitor-General for the proposal in the bill except that a similar enactment exists. Perhaps he will consider it on its merits. The clause enacts that His Majesty in Council may make rules as to the duties and conduct of the practitioners in prize courts. Why should orders in council be made for that purpose? I quite agree that it is right that orders should be made as to the procedure and practice in prize courts, but I submit that the conduct of practitioners in the court is a matter for the judge to deal with, just as it is left to all tribunals. Unless there is some attempt made to justify the words proposed to be left out I shall certainly support the amendment. I see no reason on the merits why the words should be left in.

MR. JOSEPH MARTIN.¹ I would like to draw the attention of the Under-Secretary for Foreign Affairs to the interest of the colonies in regulations of this kind. I suppose that ordinarily the practitioners before these courts would be those entitled to practise in the respective countries who are parties to the arrangement. In

¹ Liberal. Mr. Martin was born and educated in Canada where he took an active part in politics for over twenty years.

connection with this country there are a number of colonies who have persons in them entitled to practise law. They are not entitled to practise law in this country. I would ask that in making these regulations the scope should be widened, so that a lawyer in Canada, in Australia, or in any other of the self-governing colonies should be entitled to the same right to appear before a court of this kind as an advocate, as are the barristers of this country itself. I think it is a great shame now that a practitioner in Canada or any of the colonies is not allowed to appear in any courts of this country, and that there is no way he can get that right except by becoming an ordinary student of law here. In this matter the Government can help the practitioners in the colonies by seeing that these regulations are wide enough to include everybody in the British Empire who is entitled to practise law.

MR. ATHERLEY-JONES. In order to save the time of the House I would say that I agree that there is apparently a precedent in the act of 1894. I think that the Solicitor-General will agree that the words may possibly be objectionable. I merely speak in the interests of the profession. If the Solicitor-General will indicate that the matter will be considered I shall not press the amendment.

SIR J. SIMON. I shall be glad to give that undertaking.

Amendment, by leave, withdrawn.

Clause 13. (Prohibition of Officer of Prize Court Acting as Advocate, etc.)

It shall not be lawful for any registrar, marshal, or other officers of the supreme prize court or of any other prize court, directly or indirectly to act or be in any manner concerned as advocate, proctor, solicitor, or agent, or otherwise, in any prize appeal or cause.

MR. W. PEEL. I beg to move, at the end of the clause, to add the words "on pain of dismissal or suspension from office by order of the court."

The prohibition in this clause is very strong and very wide. I suppose that the intention is that the prohibition shall be carried into effect, but I cannot see anywhere in the bill any penalty at all. It can hardly be assumed that these gentlemen will take the suggestion of an act of Parliament as a sufficient hint to them not to act in this direct or indirect way. I therefore propose to add these words by way of penalty at the end. Some penalty is necessary to enforce the rule.

MR. BUTCHER. I beg to second the amendment.

SIR JOHN SIMON. I hope my honourable friend will not press the amendment. It would, of course, be in the nature of things an

offence which could be dealt with in a disciplinary manner if need be, and I suggest to the honourable and learned gentleman (Mr. Butcher), more particularly as a practising member of the profession, that it is not desirable that we should, on the face of the act of Parliament, describe exactly the penalty when we do not know the extent of the offence. I suggest to the House that if the matter is left as it stands we have a quite effective prohibition. There is no difficulty in enforcing it if only as a matter of contempt of court. I should have thought in the interests of legislation it would be better not to try and prophecy before the event, but to leave a certain latitude for the case to be dealt with when it arises.

Mr. BUTCHER. The Solicitor-General suggests that a breach of the enactment of this clause should be dealt with as contempt of court. I am not going to put my opinion against his, but I have never heard of such a case of contempt of court, and I have heard of a good many. I think it is exceedingly doubtful whether it could be dealt with as contempt of court.

Sir J. Simon was understood to concur.

Mr. BUTCHER. If it is not contempt of court how is it to be dealt with? The Solicitor-General says in a disciplinary manner. I suppose there might be an inquiry, at any rate in this country, before the discipline committee of the law society. That does not seem to me to be a proper way of dealing with it. In putting down this amendment my honourable friend has followed a precedent which I think is of some value, that of the naval prize bill which was brought into this House, and ordered to be printed on 16th May, 1902. It does not follow that because an officer of the court commits this offence therefore he would be dismissed or suspended. All that is provided by the amendment is that if he commits this offence he does it on pain of dismissal or suspension: in other words, that a motion has to be made before the court for his suspension or dismissal, and if the court thinks it a proper case they will dismiss him. I appeal to the Solicitor-General as to whether it is not desirable on the face of the bill to point out to the officer that this provision is not a mere *brutum fulmen*, but is meant to be enforced, and will be, if necessary, by suspension.

Mr. POLLOCK. I quite feel the weight of what the Solicitor-General has said in respect of some of these officers who are referred to in clause 16, but that does not meet the case of a registrar or marshal or other officer of the supreme prize court, because it must be recollected that this statute itself is setting up a supreme prize court. It is a new name which is introduced by virtue of clause 1 of the act, and no doubt, in the case of the high court as it exists at present, there will be no difficulty and there would be a disciplinary power

over the offending person. I doubt whether all the cases which are required under clause 13 are met by the honourable and learned gentleman's observation. Perhaps he may consider it worth while considering whether in regard to the new person who is set up by this act, namely, the registrar of the supreme prize court and other persons, it may be necessary to have some such words as those suggested.

SIR J. SIMON. Of course. I should be very glad to see that consideration is given as my honourable and learned friend asks. In some sense, the proposal made just now by my honourable and learned friend (Mr. Atherley-Jones) bears on the present point because the clause we have just passed as it stands at present, amongst other things, empowers rules of court to be made which will regulate the proceedings and conduct of practitioners, and, no doubt, those rules might be available for the purpose of enforcing the contents of clause 14. I promise that I will consider whether it is right to keep these words in, and if we did not keep them in I should have felt that there was great force in the suggestion. The two things are related. I think the right thing to do would be to deal with the two things together, which I promised to do, covering the marshal and the registrar.

MR. W. PEEL. I saw that relation, but I had some doubt as to whether those words would go as far as the Solicitor-General thought. Of course, if he thinks so, I will withdraw.

Amendment, by leave, withdrawn.

Clause 16. (Custody of Ships Taken as Prize.)

Where a ship (not being a ship of war) is taken as prize, and is or is brought within the jurisdiction of a prize court, she shall forthwith be delivered up to the marshal of the court, or, if there is no such marshal, to the principal officer of customs at the port, and shall remain in his custody, subject to the orders of the court.

MR. W. PEEL. I beg to move, after the word "forthwith" ["she shall forthwith be delivered"], to insert the words "and without bulk broken."

The result of the amendment will be that when a vessel is taken and is brought within the jurisdiction of a prize court she shall forthwith, and without bulk broken, be delivered up to the marshal of the court. It is very important that some such words as those should be introduced, because, after all, the evidence on which the case has to be decided may be contained within the ship herself, and it is of the utmost importance to prevent frauds and, in dealing with either the cargo or the ship's papers, that there shall be a distinct prohibition

against tampering in any way or dealing with the contents of the ship. There will be of course very great temptation to do so, both as regards the papers and as regards the cargo. Article 40 of the Declaration of London bears very closely on the matter. It says:

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume or freight, forms more than half the cargo.

Of course, if the cargo in some of these respects approaches that mystic half, and perhaps it is a question whether there might be a little over, there would be a very great temptation, if possible, to remove some of the cargo in order to bring it under the half, and in that case the vessel might be saved from condemnation as contraband. That is only one instance. I submit on general principles that it is very important that there should be no opportunity for fraud, and that there will be better security if these words are inserted.

Mr. GRETTON. I beg to second the amendment.

Mr. McKINNON WOOD. The object with which these words were originally inserted, I am told on good authority, was to prevent excesses on the part of privateers, but I think if I explain the reason why they are omitted the honourable member will be content to withdraw the amendment. Under modern conditions it is quite impossible to examine the cargo of a ship for contraband without breaking bulk. It is necessary in the interests of the naval service that these words should not be inserted. If they were put in they would impose a restriction on a naval officer in discovering contraband. I hope the honourable member will be induced to withdraw the amendment. Of course, we have great interest in discovering contraband in case of war.

Mr. BUTCHER. I think the explanation given by the honourable gentleman is hardly sufficient. A ship is taken into port in time of war, and it may be necessary at the time of capture to examine her in order to find out whether there is contraband on board. I quite agree, but that is not the point referred to by my honourable friend. He refers to a later period altogether. In the first stage you take the prize, and for that purpose you make any examination that is necessary, and then at the second stage, when the ship is brought within the jurisdiction of the prize court, my honourable friend says, that "she shall forthwith and without bulk broken be delivered up to the marshal of the court." The explanation of the honourable gentleman does not meet that case. There is going to be no restriction on a naval officer at the time of capture, but what my honourable friend proposes is that once the ship is brought within the jurisdiction of a prize court it should be handed over to the marshal intact. I should like that the question should be considered from that point of view. If there is an answer from that point of view I shall be glad to hear it.

Mr. GRETTON. The amendment does not mean cargo being turned over in the ship's hold. It means that no portion of the cargo shall be removed out of the ship to another place. That is to say, in the ordinary sense of the commercial term that bulk shall not be broken.

Mr. PEEL. I have not the slightest intention by this amendment to prevent the capturing of a ship.

Mr. KING. Is the honorable member in order in speaking twice?

Mr. DEPUTY-SPEAKER. The honourable member has the right of reply in the case of a bill which has come from a grand committee.

SIR A. CRIPPS. I do not know whether I shall be in order in speaking after the honourable member has replied.

Mr. DEPUTY-SPEAKER. The honourable member could only speak then by leave of the House.

SIR A. CRIPPS. I only want to say that everyone on this side of the House sympathises with the statement that nothing should be done to interfere with the proper discretion of a naval officer of this country. But if we look at the clause we find that it refers to a ship brought within the jurisdiction of a prize court. Therefore the question does not arise here as to what is done at the moment of capture by the captain. Surely, after the ship has been brought within the jurisdiction of a prize court, bulk ought not to be broken. I agree that at an earlier stage it might be necessary to break bulk.

Mr. PEEL. I only want to get an answer upon this point. The honourable gentleman's answer met really a wrong point. There is not the slightest intention by this amendment to prevent the capture of a ship. The captain who takes the vessel examines the cargo. Perhaps the Solicitor-General, who is ready with an answer upon every point, will state the objection to my proposal.

SIR J. SIMON. It appears to us extremely doubtful whether the construction suggested by the honourable gentleman would necessarily be the right one if these words were inserted. I hope the committee will not regard this as a technical point raised by lawyers. It is a plain and simple rule. I say that the other view is the natural one to take, that a ship (not being a ship of war) should, when brought within the jurisdiction of a prize court, forthwith be delivered up to the marshal of the court. In this matter we are anxious to avoid misunderstanding, and we desire to have a rule which will work for the advantage of good administration and in the country's interests in time of peril. We think it is not desirable to lay down such a hard and fast rule as that proposed by the honorable member. If these words were put in it might be considered that a captain could not examine cargo at the time of capture.

Mr. PEEL. If the Solicitor-General takes that view I will withdraw the amendment, because my honorable friend (Mr. Butcher) has another amendment which I think expresses what I mean without any manner of doubt.

Amendment, by leave, withdrawn.

Mr. BUTCHER. I beg to move, after the word "forthwith," to insert the words "in the state in which she and her cargo then are."

By that amendment we will secure the result we desire, that after a ship has been captured and brought into the jurisdiction of a prize court, she shall be delivered up to the marshal of the court. That will prevent any tampering with the ship after she is brought within the jurisdiction, and the amendment is not open to the objections which have been stated by the Attorney-General.

SIR J. SIMON. I know that there is some difficulty in drafting an amendment at a moment's notice, and I trust that the honorable member will not ask me to accept those words, as they are capable of being understood as something very little short of a pleonasm. I quite understand what the honorable and learned gentleman means, and it will be considered. But I would ask him not to press those words, because we must consider the right form in which to put anything, if, indeed, anything is needed.

Amendment negatived.

Clause 17. (Bringing in of Ship Papers.)

(1) The captors shall in all cases, with all practicable speed, bring the ship papers into the registry of the court.

(2) The officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture and saw the ship papers delivered up or found on board, shall make oath that they are brought in as they were taken, without fraud, addition, subduction, or alteration, or else shall account on oath to the satisfaction of the court for the absence or altered condition of the ship papers or any of them.

(3) Where no ship papers are delivered up or found on board the captured ship, the officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture, shall make oath to that effect.

Mr. BUTCHER. I beg to move, at the end of sub-section (1), to add the words, "and such registry shall transmit to the Secretary of State for War and the First Lord of the Admiralty copies of

any such papers as contain military, naval, or political information affecting the war, and shall, if required by a Secretary of State, hand over such papers to a Secretary of State."

The object of this amendment is plain on the face of it. It may be that amongst the ship's papers are State documents or other papers containing important information disclosing the enemy's plan of campaign, the disposition of the ships, and other matters which are extremely important to be known by the executive of the other belligerent. If such papers are found they should be sent at once to the proper authority in order that the information so afforded may be utilized. I would ask the Government, unless they can give some good reason for not doing so, to accept the amendment.

SIR A. CRIPPS. I beg to second the amendment.

SIR J. SIMON. Again, the object of the honourable and learned member is a good one, but again I suggest that it is not desirable and it is certainly not necessary that we should insert these words. So far as they have any positive effect they merely require to be done that which in proper circumstances would be done, and so far as they have a negative effect they might conceivably have a restrictive effect. The King's Proctor represents the Crown for the purposes of this clause, and if documents were found of this character which it was desirable, not only for these important members of the Cabinet but for any member of the Cabinet to see, of course they would see them. I hope the honourable gentleman will not suggest a form of words which might have some restrictive effect.

MR. BUTCHER. I have had no information as to how they could have any restrictive effect. Is this court only a court in this country?

SIR J. SIMON. It is a British court.

MR. BUTCHER. So I thought. In other words you might have these important documents locked up on a court in Australia or Canada, or any other British possession. My object is to secure that these papers should be sent to the central authority in London, where they can be dealt with.

SIR J. SIMON. Does not the honourable gentleman see that he might deprive the admiral on the station of the opportunity of seeing them, because they have got to be sent across to Europe?

MR. BUTCHER. That objection could be met easily by saying that before they are sent, the admiral on the station should be afforded the opportunity of copying them, but I venture to think that the suggestion is only thrown out in despair as an argument against this proposal. I have heard no word of explanation as to how this amendment is in any way restrictive, but if the Government choose to add any words to enable the admiral at the station where the prize court is, to have copies of them, I should, of course, accept it.

Mr. HAMAR GREENWOOD.¹ I oppose the amendment on the ground that it is redundant, and redundant words in a statute are dangerous. May I point out to the honourable and learned gentleman that under the words of the statute the captors in the case would be British naval officers, and the first thing they would secure would be the ship's papers, and they would naturally search through them. Their instructions are to find out any information bearing on the war that is going on. Their first duty would be to communicate with their superior officers or other officials at home and the information which the honourable and learned gentleman wishes to be given to the executive would be sent on without any express words having to be added here.

Mr. RIGBY SWIFT.² I think that the honourable member is perfectly right in saying that if the captain of a British ship were left alone the first thing he would do would be to send any papers he found to the British executive, but the clause with which we are dealing deprives him of the right to send papers to the British executive, and provides that in all cases he should send them to the registry of the court. When they are brought into the registry of the court I presume that the court would have to keep them, and will have to account and be responsible for them, and all that the amendment proposed by my honourable friend suggests is that the court shall be empowered when the occasion necessitates to send copies of those documents over to the executive. The learned Solicitor-General said that difficulty would arise by taking the documents away from one side of the world to the other, but all that the amendment suggests is that copies of the document should be sent across the world. The originals would stay where they were unless they were applied for by the Home Secretary. The amendment can do no harm, but it makes clear what the powers of the registry are in these documents. As the clause at present stands, it makes the court responsible for them, and it will be very reluctant to part with them.

Amendment negatived.

Part III. International Prize Court.

Clause 23. (Appointment of British Judge and Deputy Judge of International Court.)

(1) In the event of an international prize court being constituted in accordance with the said convention or with any convention entered into for the purpose of enabling any power to become a party to the said convention or for the purpose of amending the said con-

¹ Liberal.

² Conservative.

vention in matters subsidiary or incidental thereto (hereinafter referred to as the international prize court), it shall be lawful for His Majesty from time to time to appoint a judge and deputy judge of the court.

(2) A person shall not be qualified to be appointed by His Majesty a judge or deputy judge of the court unless he has been, at or before the time of his appointment, the holder, for a period of not less than two years, of some one or more of the offices described as high judicial offices by the appellate jurisdiction act, 1876, as amended by any subsequent enactment.

SIR A. CRIPPS. I beg to move, to leave out clause 23.

This clause raises the question of the constitution of the court, and that has already been dealt with so fully that I do not propose to refer to that topic again. But, in dealing with the constitution of the court, it was pointed out that the question of the powers of the court would arise at a subsequent stage. The question really arises upon this proposal to leave out clause 23. I object to any judge being appointed from this country to administer a law which, according to the principles heretofore held in this country, is unjust and reactionary. In substance, I object to any judge being appointed to a commission or convention where the law is not only in opposition to the law of this country, but is reactionary and harsh as compared with the maritime law hitherto exercised here. I will take the illustration as regards conditional contraband. I think the question of conditional contraband, particularly in reference to food-stuffs, is a matter of vital importance to this country, and I do not want a judge of this country to administer a law which is different from the law which is now being administered in our own prize courts, and which, as compared with that law, is, I think, both harsh and reactionary. At the present moment the question of conditional contraband, in regard to the law of this country, depends on the destination of the cargo and on the destination of the ship. As regards conditional contraband, we have the same principle which we have with regard to absolute contraband, namely, the law of continuous voyage.

What is the result of the law to be administered by the judge under the international code? When administering the law in our own courts, in the first instance, we have to administer a different law altogether from what we have to administer in the international court, and that raises a most crucial question. I assume that it is admitted that the law of conditional contraband as regards food-stuffs is of vital importance to this country. I am not going into the details, but that will be accepted as a self-evident proposition.

What will be the class of questions which will come before the international court, and with reference to which I think we ought not

to appoint any judge at all? Take the case of a neutral vessel bringing goods to this country. Take such a port as Glasgow to illustrate what I mean in respect of the general principle. The right honourable gentleman the Foreign Secretary pointed out some time ago—and I think no one could dispute his dictum—that whether for instance, foodstuffs coming to Glasgow—I am speaking of a state of war—were contraband or not, would depend on the question of fact whether Glasgow came within the words “base of operations” or not. So you have a question of a most crucial kind at once. You can not have a more crucial question than that of whether the great ports of this country—

MR. DEPUTY-SPEAKER. I am afraid that the honourable and learned member is proceeding to discuss the whole convention, while this clause deals with the appointment of the judges. It would not be in order on the question of the appointment of the judge to go into the merits of the whole question.

SIR A. CRIPPS. I do not desire to go further than to discuss the question of the powers of the court. I quite understand the objection to my going further if I sought to discuss the Declaration of London on this clause. But is it possible to discuss the question whether it is advisable that a judge should be appointed in this country to the international court to consider the class of questions with which the court will have to deal? I quite admit it would not be competent for me to raise the whole question of the Declaration of London, and I quite see the objection to that. But in dealing with the question of sending a judge from this country to this international court it seems to me that I must refer to the powers which the court will exercise. If I can not do that under your ruling, sir, I will sit down. The powers which the court will exercise may have been defined in great part by the Declaration of London, but that happens to be a coincidence so far as my argument is concerned. If I can not go into the question of the nature of the law to be administered by the international court, then it will be useless to proceed further with my argument.

SIR R. FINLAY. I very respectfully submit that while it would be out of order to get into details in the way of discussing the Declaration of London, one element is whether it is proper that this country should join in the setting up of this court in view of the nature of the functions which the court has to discharge. I submit for that reason that it is open to any speaker to point out objections to our joining in the constitution of such a court which will have functions of a certain nature to discharge, and that element can not be excluded from consideration. Without going into details, I submit that the general duties of the court can not possibly be excluded.

MR. DEPUTY-SPEAKER. As the honourable and learned member said, it is a matter of degree. He is entitled to emphasise the importance of the matters the judge will have to decide, but not by way of illustration to really reargue the merits of the Declaration of London. Under cover of his illustrations he appeared to me to be attempting this.

SIR A. CRIPPS. I think it would be quite possible for me to submit what I wish to say within your ruling, sir, and in fact I apologise for not having kept within it. It was not my intention to raise the general question of the declaration, but to refer to the point whether it was advisable or not, in view of the duties of the international court to appoint a judge. If we do not appoint one of the judges upon it, so far as we are concerned we do not come under the jurisdiction of the international court.

SIR E. GREY. No.

SIR A. CRIPPS. That is necessarily so. I should be astonished if the Foreign Secretary said that, although we are to have no voice in the court at all in the sense of appointing any judge or deputy-judge in connection with it, yet it is to have a maritime jurisdiction affecting the vital interests of this country.

SIR E. GREY. I do not wish to say that for a moment. All I wish to point out is that the effect of the honourable and learned gentleman's amendment would be to place us in that position. If this clause goes, we are bound by the international prize court, but we could not have any representative upon it.

SIR A. CRIPPS. I do not want to argue that point further. We have been told several times that the convention must be accepted as a whole and taken as one document. I think I am right in saying so. Therefore if this House determined to alter one of the terms of the convention, and a very crucial term, I understand the convention itself would fall. I do not want to argue that further at the present time, but it is incidental to my general argument, and I would ask the Foreign Secretary to explain how a vital principle of this kind can be excepted from the convention, and yet that the convention can stand.

MR. DEPUTY-SPEAKER. If it can not, that would appear to make the honourable member's present motion out of order.

SIR A. CRIPPS. The same would apply to the new clause. I desire to put this other point. What this court would have to deal with would be some question of law of a very complex character, and some questions of fact of a very complex character, and may I illustrate what I mean as to the nature of those complex questions of fact and law in which the law administered by the international tribunal would be different, and, I think, reactionary, as regards the law administered in this country. Suppose, for instance, you had to con-

sider whether a neutral ship had been properly sunk, or, in the exigencies of the naval officers in naval operations. That is a question which could never come before the supreme court of this country, because we do not allow that as an excuse at all in connection with the sinking of the ship. Yet a point of that kind, one of the most difficult to deal with, and of great complexity, would, according to the new code—a reactionary code—come before this international prize court. There again I say that one of His Majesty's judges ought not to be appointed a member of a court which has to consider a matter of that kind, and which, according to my view, is wholly reactionary and improper as regards the fair rights of neutrals. Another very important principle which is established in our courts is the abolition of privateering. We have nothing more to do with that, as it has been abolished, but if you allow the principle of a merchant vessel being changed on the high seas into a vessel of war, then at once you begin the whole question over again. However we look at what this international prize court has to decide, we find not only great complexity of questions, but we find questions which are not dealt with by judges in our courts at all, because for centuries, I might say, or at all events, for many years, we have ruled those out of our courts and decided in the opposite direction. It comes to this, that after all this is a new tribunal, which will lay down a new maritime code of vital importance to this country, and in many respects reactionary as regards the past policy of this country. It is on that ground, as well as on the ground of the constitution of the court, a question which I need not reargue, that I move the amendment.

Mr. POLLOCK. I beg to second the amendment. I think it very important that before this clause is adopted by the House some fuller explanation should be made of the circumstances and the purposes of this court. We find by article 15 that the judges appointed by eight powers are always summoned to sit and that the same judge may be appointed by several of the powers. What will be the position of the composite judge appointed under clause 23? The decisions of the court under article 43 are to be arrived at by a majority of the judges present. I desire to ascertain whether or not the judge appointed by several of the powers will have a vote for all the powers he represents or simply one vote. The point I desire to put to the Foreign Secretary is as to a statement contained in his despatch from the Foreign Office of 27th February, 1908, when he said:

His Majesty's Government are deeply sensible of the great advantage which would arise from the establishment of an international prize court, but in view of the serious divergencies which the discussion at The Hague brought to light as to many of the above topics after an agreement had practically been reached on the proposals for the creation of such a court, it would be

difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed.

I do not know that we have had that assurance given in this House or in the other House. Has that understanding been reached? If it means that the understanding is obtained by the Declaration of London then I shall ask the Foreign Secretary kindly to say whether this country has at present ratified that Declaration, and what other countries have ratified it, because his statement that it would be difficult, if not impossible to carry this legislation through the British Parliament without such definite understanding, I think gives a pledge which I am entitled to ask the right honourable gentleman to fulfil at the present time. So far as my knowledge goes, and indeed I think that of a great many other honourable members, we do not know whether or not this country and the other countries which will be concerned in this court have at the present time ratified the convention, and so we have all the foreign countries and this country getting a court without some more definite understanding as to the rules by which the new tribunal should be governed. The Financial Secretary to the Treasury said that many other countries had the right to a voice on that, and that this portion of the act is intended to give us a judge who would speak for this country, and that without this clause it would be impossible for this country to be represented. Agreed that that is so, but at the same time we want to know what is the law which shall hereafter be administered by this court. In the past this country has, certainly under the treaty of Washington of 1871, made more stringent clauses in respect of its own country than many other countries have assented to. In seconding the amendment I ask the Foreign Secretary to give the assurance which he said was absolutely essential, that by passing this clause we are not appointing a judge to go to a court which has not at present a real code of law which can be exercised by the court.

MR. MCKINNON WOOD. I should like to bring the House back to the amendment. The clause begins with these words:

In the event of an international prize court being constituted in accordance with the said convention * * * it shall be lawful for His Majesty to appoint a judge or deputy-judge of the court.

The amendment is to the effect that in the event of an international court being set up it shall not be lawful for His Majesty to appoint a British judge. I am sure honourable members do not want to pass that amendment. The fact of the matter is that the object of the honourable and learned member was entirely different. His argument was that as the Declaration of London and the convention establishing a prize court must be taken as one instrument, therefore

you could bring in those two instruments in discussing every amendment on every clause of this bill. That is an impossible position. Though the honourable and learned member avoided discussing these things, the whole of his argument was that, as he disapproves of the Declaration of London, it ought not to be lawful for His Majesty to appoint a British judge on this court. I do not think it is fair to take up the time of the House at any great length discussing that. I hope the House will allow us to get to the other amendments which really deal with the substance of the bill. This is simply an amendment to wreck the bill, and there is no point in moving it on this clause.

SIR R. FINLAY. It would be impossible to misunderstand the amendment or the argument of my honourable and learned friend more completely than the right honourable gentleman has done. The amendment does not provide that in the event of an international court being set up it shall sit without an English judge. The object of my honourable and learned friend is to prevent this international court in its present form being set up at all. He moves to leave out the whole of clause 23, and it would follow if that were carried that the other sections relating to the setting up of the court would be left out. It is really trifling with the subject to speak in that way. The right honourable gentleman says that the argument of my honourable and learned friend was that because he disapproved of the Declaration of London the international court should not be set up. That was not the argument of my honourable and learned friend at all. He admitted that he disapproved of the Declaration of London. So do I. But that is not the point. What he suggested was that the questions involved were of such a nature that it was highly undesirable that there should be an international court to which we should submit ourselves dealing with such subjects. The question is not whether or not the provisions of the Declaration of London are good, but whether it is desirable that a court, consisting of representatives of all the nations of the world, to use the right honourable gentleman's phrase, should be set up to deal with questions of such difficulty and delicacy. The amendment and the argument of my honourable and learned friend have met with absolutely no answer.

SIR E. GREY. The right honourable gentleman opposite has frankly admitted that the object of this amendment is to prevent an international prize court being set up——

SIR R. FINLAY. In this form.

SIR E. GREY. If the right honourable gentleman had only allowed me to finish my sentence I was about to add the words "in this form." Surely that was the object of the new clause which we discussed earlier in the afternoon. Are we to discuss that on every

possible clause? I really think that in the interests of the proper discussion of the bill the time has been reached when we should confine ourselves in argument, as far as the Government are concerned, strictly to the operation of a particular amendment on a particular clause. This clause does not set up the international court. It simply says, if an international court is set up, not that His Majesty should be obliged to appoint a judge, but that it should not be unlawful for him to do so. What would be the effect if the amendment were accepted? The right honourable gentleman says that consequentially we should not be able to go on with the international prize court. Yes, but that is a second reading point. I do not see how he can fairly ask to make that point on every particular amendment on every particular clause. I respectfully submit to the House that the Government are really serving the purpose of having a discussion on the details of the bill by confining themselves to the effect of the amendment, and by pointing out that if carried it would not prevent the setting up of an international prize court in this form, but simply make His Majesty powerless to appoint a representative on that court.

Mr. IAN MALCOLM.¹ I have no objection whatever to a judge being sent to take part in this international prize court provided the court is of such a character that we can have any confidence in it at all. The Secretary to the Treasury has rather shaken my belief in the prize court by a certain remark that he made. He said in regard to these minor powers that if they had no jurists of sufficient eminence they might appoint them from other nations. I do not know by what instrument, or whether by instrument or by international tradition, that is allowed. Herein lies a great danger which largely vitiates the composition of this prize court. It occurs to me that very possibly eventualities might arise by which these three minor powers might appoint as their judges members of a nationality which by alliance or tradition was very friendly to one of the belligerent powers. That would indeed pack the bench. If I were assured that the bench could not be packed by such an operation as that, which is quite a conceivable operation, I should see no objection whatever to a British judge sitting upon the prize court. I invite the Government's earnest attention to that point in order to see that that danger is not allowed to continue.

Mr. SANDYS. If my honourable friend goes to a division I shall certainly support him, not only on the grounds that he has urged in support of this clause being deleted, but on the other grounds brought forward by other speakers. In regard to the qualification and disqualification of the judges and deputy judges which are mentioned

¹ Conservative.

in sub-section (2), as I read it I understand the judges or deputy judges of the court shall not be appointed unless as follows:

A person shall not be qualified to be appointed by His Majesty a judge or deputy judge of the court unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices described as high judicial offices by the appellate jurisdiction act, 1876, as amended by any subsequent enactment.

With regard to that particular restriction, the point which I wish to draw attention to is, that as far as I can see, in spite of the fact that obscure countries, such as Ecuador, Salvador, and so forth, will be represented, colonial judges will have no opportunity of taking their places as representatives of—

MR. SPEAKER. The proper place to raise that point is when we reach sub-section (2).

MR. SANDYS. Is it not the whole clause that is to be deleted by the honourable and learned gentleman's amendment?

MR. SPEAKER. Yes, but I have only put the amendment to leave out down to the word "or."

Question put, "That the words proposed to be left out, down to the word 'or,' stand part of the clause."

The House divided: Ayes, 168; noes, 78.

MR. ATHERLEY-JONES. I beg to move, in sub-section (1), to leave out the words "or for the purpose of amending the said convention in matters subsidiary or incidental thereto."

Parliament is asked to establish a tribunal which is to be constituted under certain conditions, and what is asked is that the Crown may from time to time appoint judges and deputy-judges to exercise their functions upon this tribunal in this court as we have knowledge of its procedure and principles and organization as they are at present composed. This clause, as it at present stands, enables the Crown, by a subsequent convention, to alter entirely the constitution of the court. What I want to point out is this: You may enter into a convention which may entirely alter the constitution of that court, and yet, as this bill leaves this House, all power of Parliament over the constitution of the international prize court ceases, all power for the payment of judges ceases, and the power of controlling the continuance of judges. Parliament parts absolutely with all control over this international tribunal. That, to my mind, is a more serious matter, and the amendment which I am moving, I suggest to the Foreign Secretary, is merely an attempt to protect the interests of this country against any folly or anything of that kind which the convention may enter into, and to protect us from acquiescing having no power whatever in the appointment of judges.

Mr. SANDYS. I beg to second the amendment.

Mr. MCKINNON WOOD. I hope my honourable and learned friend will see his way to withdraw this amendment, and I will explain to him what happened in the committee.

Mr. ATHERLEY-JONES. I was excluded from the committee.

Mr. MCKINNON WOOD. What happened in the committee was this: When we were considering the clause as it originally stood the point made by my honourable friend was argued, and to meet the wishes of the critics the words were inserted in committee, "in matters subsidiary or incidental thereto." The whole object is to provide for small amendments. For instance, it is agreed in the convention that the meetings should be at The Hague. Circumstances may arise to make it necessary to remove the meeting to another place. If for small changes of that sort you insist on setting up a prize court all over again that would be a very unsatisfactory position. I think the substantial purpose was met by the words inserted, "Amending the said convention in matters subsidiary or incidental thereto." The convention only lasts 12 years, and it would be very unsatisfactory if the whole matter had to be put into the melting pot any time in those 12 years so that small alterations should be made. It would render it very difficult to make small alterations which everybody may agree upon, but which are not of sufficient importance to have the trouble of dealing with the whole subject afresh.

SIR A. CRIPPS. In reference to what has been said by the right honourable gentleman opposite, with a great deal of which I agree, it is as well to consider that these words would make no substantial alteration in the bill, such as altering the way in which the various countries are represented. If it is merely incidental matter, I see no objection to the clause as it stands, but I should like some assurance from the Solicitor-General that this would not give power to make such alteration as, for instance, would alter the proportion of representation by the various countries.

SIR R. FINLAY. A really important question arises from what the right honourable gentleman has said. Who is to decide whether the alteration is merely subsidiary or incidental? What is subsidiary or incidental? A charge is made which may refer to procedure, and underlying that there may be questions as to the constitution of the court or questions of principle, and the effect of these words is that for the period of the convention—that is, 12 years—the House parts absolutely with all control. It not only passes this bill for the purposes of the convention, but for the purposes of any convention amending it on subsidiary or incidental matter. There ought to be some means of enabling the House to see whether changes are really subsidiary or incidental.

Mr. BUTCHER. I think there is great force in what has been urged by the right honourable and learned gentleman. Who is to decide whether these questions are subsidiary or incidental? Supposing an alteration is made when His Majesty's present Government are in office. They may say, "This is a mere trifling thing; it is really subsidiary and of no importance," but others may think it is of importance, and who is to decide between them? I say the wording of this clause is extremely unsatisfactory. The right honourable gentleman opposite says if the convention is altered in matters subsidiary, the control of this House need not be exercised, but what are matters subsidiary? They are not necessarily what the right honourable gentleman calls small matters; very often they may be important matters. The main object of this convention is to set up an international prize court. There are matters subsidiary to the main object which may be very important indeed, yet if we pass this clause in this form, we lose all control by this House of the international prize court. Let me suggest to the Foreign Secretary that if these words are accepted, there will be no *empasse* whatsoever. Let us suppose the court is constituted and then that there is an alteration in the convention in matters subsidiary or otherwise, if legislation is necessary that this House should continue that international prize court, then let the Government of the day ask for it. If it is reasonable they ought to get it, and they will get it, but if it is unreasonable they will not get it; but do not let us, who are trustees of the rights of our fellow-subjects, part with the control of this bill and the international prize court set up in subsidiary matters of which we know nothing.

Mr. JAMES MASON. I think the right honourable gentleman said words were introduced on committee limiting this provision to subsidiary or incidental matters. May I call attention to the fact that the right honourable gentleman has an amendment on the paper which seems to me to bear considerably upon this point. In that amendment he contemplates the possibility of another convention replacing the convention we are now speaking about. Unless I am mistaken in that altogether, it seems to me difficult to contemplate the two amendments apart from each other. If he contemplates the possibility of a new convention entirely replacing this, then the effect of these limiting words would be completely altered.

SIR E. GREY. I understand these words were inserted in committee to meet this particular point, and were agreed to. I understand they were intended to safeguard the convention from having substantial and material alterations made in it. The question whether the words carry out that particular intention or not is more of a legal question. If the Government join the international prize court convention, and

a question arises whether it is more convenient to sit at Amsterdam or The Hague, the Government would not be able to assent without coming to the House of Commons for legislation. No other country would be placed in that position. The judge appointed under this clause would represent the Government. If that power is withdrawn and if small changes are introduced of a subsidiary and incidental character in the convention itself, the Government would be in the position of having to come to the House every time. I think in matters of this kind the reasonable thing is that the House should remain in possession of the control which it always has over the executive of the day. The Government has executive power to carry out acts of different kinds, and a whole treaty may be passed by them. The House trusts and has confidence in the Government of the day, and now considers it fit to be trusted with discretion in the gravest executive acts, and certainly in small matters subsidiary and incidental to a prize court convention. If the Government does what the House would not approve, the House has always the opportunity of raising the question. Considering that that is the general basis on which the relations between the House and the Government rests, and on which the confidence of the House rests, even in great things, in a small matter like this I think the House ought to leave it to the discretion of the Government to deal with subsidiary or incidental matter, without giving the House an opportunity of expressing an opinion upon it. We were asked whether a change in the composition of the court would be considered a subsidiary and incidental change. After the debate in this House and the stress which has been laid upon the composition of the court I will say that a change of that kind would not be one which the Government of the day ought to make without giving the House an opportunity of considering it.

Mr. ATHERLEY-JONES. After what has fallen from the right honourable gentleman I am perfectly certain he will act in a right and proper sense in this matter, and I ask leave to withdraw my amendment.

Mr. POLLOCK. I moved this amendment in committee, and the learned Solicitor-General was good enough to consider what words he could introduce in order to obviate the point I had in mind, and in order, at the same time, to preserve a right for a small amendment which might be considered necessary in the case of certain powers. He told the committee that in the case of certain powers whose time had elapsed there might be some difficulty in coming into the convention, and the Solicitor-General offered these words in place of the amendment which I moved, introducing "in matters subsidiary and incidental thereto." I thought at the time those words were sufficient, and I accepted the amendment of the Solicitor-General.

Mr. PEEL. May I comment upon the very remarkable statement which has just been made by the Secretary of State for Foreign Affairs. He has been challenged as to the importance of particular changes and upon one particular change, namely, the question whether an extra judge should be appointed or some alteration made in the representation of some of the powers. The answer the Foreign Secretary gave was that there has been a great deal of discussion in the House of Commons upon this point, and that being so he said it would not be considered a subsidiary point. Now, if that point had not been raised, it is quite clear it would have been considered a subsidiary point. I want to point out that there are a great many points which, in order to save time, have not been raised this afternoon which are quite as important as that. There is the question of appeal in which the class of persons is laid down by whom appeals may be brought. Is that a subsidiary question? At any rate it is a very important question. Simply because we have not discussed this question will it be considered subsidiary? May I suggest to the Foreign Secretary that, as I have mentioned this point, he will not consider it subsidiary. After all, a question may be subsidiary and yet be an exceedingly important and substantial matter. I think the House of Commons ought to be the judge in these matters.

Amendment, by leave, withdrawn.

Mr. MCKINNON WOOD. I beg to move, in sub-section (1), after the word "thereto" ["subsidiary or incidental thereto"], to insert the words "or with any convention replacing the said convention, subject to any modifications which are subsidiary or incidental only (which court is.)"

This is really nothing more than a drafting amendment. The reason it is thought desirable to add these words is that it is the practice of international conferences very often, even when they make only small alterations in a convention, instead of passing an amending convention to abolish the old convention and re-enact another. Honourable members will remember what happened at the second peace convention. It revised all the conventions previous to the conference, and although some of them were altered only in matters of detail they re-enacted the whole of them in the new convention. It is proposed to add these words in order to meet that point, and these two things really go together. †

Question proposed: "That those words be there inserted."

SIR R. FINLAY. This amendment is subject to the objection which was raised on the previous amendment.

SIR A. CRIPPS. I can not help thinking these words as they stand are exceedingly dangerous. It may be perfectly true words of this sort may be convenient for minor alterations, but at the same time as the words stand they might have the very largest and widest interpretation. Let us take the words as they are in the first instance: "or with any convention replacing the said convention." Of course, so far the words would be absolutely general. You might have a convention totally distinct from the present convention, and yet so far as Parliament is concerned we should have no voice in it at all. Then take the words, "subject to any modifications which are subsidiary or incidental only." I really do not see *prima facie* how those words attach. You are to have a convention replacing the said convention. Presuming you had a substantially different convention, the new convention might again be subject to modifications which are subsidiary or incidental only. I am not disputing those words in that sense, but as it stands the convention which replaces the said convention might be different from top to bottom. Every single word and every single feature in it might be different. When you have got the new convention, then you might modify it in matters which are subsidiary and incidental only. I protest in the most strongest terms against words of this kind. They would give a free hand to the executive to tear up the convention altogether and make an absolutely and wholly new one without any restraint by Parliament at all. I am sure the right honourable gentleman does not mean that.

MR. MCKINNON WOOD. No, I do not.

SIR A. CRIPPS. I therefore suggest that you withdraw these words, because as they stand they carry that power, and it would be a most dangerous innovation. We have heard this afternoon about the control of this House over the executive. That is of a very shadowy character, but I hope the House will not give the executive a free hand, contrary to the whole spirit of our constitution, to make a new convention without coming to this House at all. If the Financial Secretary really only means to modify, I think he and the Solicitor-General might suggest words of a less wide character.

MR. MALCOLM. I should like to support what has fallen from my honourable and learned friend. Perhaps the Solicitor-General would explain why, after all the discussion, he has put in these words to so enormously widen the scope of clause 23. I agree there is a great deal to be said for delegating our powers to the executive to allow them to so arrange affairs that alterations can be made for others to become parties to the said convention or for amending the convention in subsidiary matters. It is, however, enormously enlarging the scope of the bill to say, in the words of the Financial Secretary, an amendment may be made with regard to any convention replacing

the said convention. The House of Commons is losing very largely its control over national affairs, and, if it means to keep its control over international affairs, this amendment can not possibly be allowed.

Mr. JAMES MASON. I confess the words of the amendment have entirely misled me. They do not seem to me in the least what the right honourable gentleman intended, but if he altered them so as to make them read "subject to such modifications being subsidiary and incidental only," I think they would carry out what he means.

SIR A. CRIPPS. I do not think those words would.

SIR J. SIMON. We are all at one in intention. The difficulty is one of language. I do not think it is possible at a moment's notice very prudently to choose the most apt words. This does not indicate any change of front on the part of those who proposed the clause. An honourable gentleman opposite in committee pointed out that the original language of the clause seemed dangerously wide, and we thought we had chosen words which actually brought it within reasonable limits. It is now pointed out—and we agree—that if you are going to make a trifling change in an existing arrangement you may do it in two ways. You may make a supplementary or modifying convention or you may tear up the old one and repeat it in the same language with these trifling alterations. The object of the amendment is simply to ensure we cover both those cases instead of confining it to one. If the honourable member who spoke last will allow me to consider his suggestion—and I will take any others—I will certainly see before this bill receives final consideration elsewhere that the words shall be such as to carry out the intention we all have.

SIR R. FINLAY. We are all at one in one sense, but we are not at one in thinking this is a good clause. I entirely object to it, for reasons I gave on another amendment. Would it not carry out our intention if we made the words read "or with any convention replacing the said convention, provided that such new convention contains no modifications which are other than merely subsidiary or incidental."

SIR J. SIMON. If the right honourable gentleman cares to move words in that form I will accept them now without pledging myself that I may not have to consider them again in another place.

Amendment, by leave, withdrawn.

SIR R. FINLAY. I beg to move, in sub-section (1), after the word "thereto" ["amending the said convention in matters subsidiary or incidental thereto"], to insert the words "or with any convention replacing the said convention, provided that such convention contains no modifications which are other than merely subsidiary or incidental."

Question, "That those words be there inserted," put, and agreed to.

Mr. SANDYS. I beg to propose to leave out sub-section (2).

Of course, very grave matters will have to be decided by this court, and it is evident very great care will have to be exercised in the choice and selection of the one representative of the British Empire amongst the 15 representatives of other powers. It seems to me that by making the very close restriction laid down by this sub-section we are unnecessarily restricting ourselves. Have we any guarantee that similar restrictions will be exercised by other powers in the selection of their representatives? Have we any guarantee that countries like China, Ecuador, Salvador, and Costa Rica will exercise the same care and place the same restriction on the choice of those who are to represent those countries on this international prize court? Again, from the terms of this sub-section, no person is to be qualified unless he has been, at or before the time of appointment, the holder, for a period of not less than two years, of some one or more of the offices described as high judicial offices under the appellate jurisdiction act of 1876. That appears to entirely prevent any great colonial jurist being ever appointed as our representative on this court. The high judicial offices referred to in this clause of the appellate jurisdiction act, 1876, include both the Lord Chancellor of Great Britain and Ireland, paid judges of the judicial committee of the Privy Council, or the judges of one of His Majesty's superior courts in Great Britain and Ireland. That seems to me to impose a complete disqualification upon any colonial representative taking his place as a representative of the British Empire on this international prize court. It is a most unsatisfactory state of affairs. It is very undesirable indeed that these restrictions should be insisted upon, especially when we remember that encouragement has been given by the Government of this country to Canada and Australia to start navies, and that, in the future, they will probably take part in naval operations. Added to this there are the responsibilities of these colonies with regard to their mercantile marine. Those responsibilities are every year increasing, and, under these circumstances, it seems most undesirable that, from this court, there should be permanently excluded representatives of those countries from this international prize court. I therefore move that this sub-section be omitted.

Mr. MITCHELL-THOMSON. I am very glad to second the amendment of my honorable friend. I quite agree with what he said with regard to the folly of setting up a permanent bar against the inclusion in this prize court of colonial jurists of reputation. It is ludicrous to talk about this court representing the whole world. One continent is altogether excluded, so, too, is the half of another

continent, and a quarter of still another continent. To talk about this being a court representative of the world is to reduce argument to a farce. I wish to ask the Government what is the necessity for putting in a test of this kind at all? It may be said it is done as a guarantee of good faith to other countries. But what guarantee are we getting from those other countries? Something has been said about Haiti and Venezuela. I know something about the internal economy of those places, and I venture to suggest it is perfectly ludicrous to suppose that those countries can appoint as their representative to this court men of equal standing with our own jurists. A court of this character, to be effective, must be composed of great international jurists. There is one great jurist in Argentine, but he is not a judge in the sense defined under this sub-section. Again, another great international jurist is Professor Holland, than whom we could not have a better representative for this country on the court, but, under this sub-section, we are absolutely precluded from appointing him as the British representative. I want the Government seriously to consider whether this sub-section is necessary. A moment ago we were advised to trust the Government. I do not know how far that is a good maxim. I do not know how far it is possible to take action against the Government or the executive when one does not agree with the action of that Government or executive. But, however that may be, if we are to trust the Government at all surely we have a right to suppose that the Government will do its duty and will not appoint jurists who will disgrace the reputation of British international law. I am sure that any Government would see to it that the British representative was a jurist of preeminent reputation, and I do not think it is necessary to have it in black and white in the bill what shall be the status of that representative. The Government might reconsider the point as to whether it would not be wise to leave out this sub-section.

Mr. HAMAR GREENWOOD. I am in complete sympathy with the mover and seconder of the amendment. If it is to stand at all this sub-section should be so widened as not to restrict the choice of any executive to those high officers set out at the end of the appellate jurisdiction act, 1876. I support the amendment for three principal reason. First, that all these high judicial officers referred to in that particular statute are paid judges in the main, whose duties are clearly defined, and who ought not to be asked to give up duties, which take up all their time, to go to sit upon some international tribunal. Secondly, this sub-section precludes the possibility of the appointment of not only Professor Holland but any other distinguished gentleman who may speak with more force, more effect, and wider knowledge of international law, and who has greater prestige among other nations than many of the higher judicial officers under

the appellate jurisdiction act. Thirdly, if this sub-section is not widened, no colonial judge can be appointed. Let us not forget that since the Alaskan arbitration award the Canadian Government have made it perfectly clear that never again would the interests of Canada be entrusted to any arbitrator unless that arbitrator was selected and approved by the Canadian Government. That feeling is growing, and rightly growing, in all the overseas dominions. At the recent arbitration at The Hague, the Canadian Government selected the Chief Justice of the Dominion, Sir Charles Fitzpatrick, to represent the Dominion. In order to meet this point, I suggest that we should add at the end of the sub-section the words "or is a jurist of repute." That will meet the arguments advanced by the mover and seconder of the amendment.

SIR J. SIMON. I think there has been a very useful discussion, because undoubtedly some of the considerations which have been urged by the honourable members are considerations which we all recognise have great weight in matters of this sort. It is no part of the intention of those who framed the bill to exclude from the great service which a distinguished jurist may render to his country in taking part in an international court, those who come from the dominions overseas. If that is the effect of these words then I do not think the words are sufficient. As a member of this House who happens to be a law officer, and who is supposed to be able to answer all the technical questions put to him, I am afraid I am not in a position to state with confidence whether any amendments to the appellate jurisdiction act, 1876, affect the matter. Be that as it may, I think the right course in the circumstances would be to omit the sub-section at this stage. For my own part, I shall be sorry if we do not do what we can to show that we in this country consider the circumstances that the court is international is no reason why those who are appointed by one or other of the powers concerned in it should bring to the discharge of their duties a biased mind. Inasmuch as we can set up for our own country a standard of judicial fairness, I am sure everybody will wish it to be done. Whether other people follow our own ideas in this or not is in no way under the control of this act of Parliament. At any rate it is not undesirable that we should recognise it ourselves. Be that as it may, I feel the force of the arguments of the honourable members opposite and my honourable friend behind me, and I think the right course will be to accept the proposal to omit the sub-section, it being understood that if we can find a form of words we may have to propose some limiting words to set up the standard we desire.

SIR R. FINLAY. I quite agree that the best course is to keep out these words altogether. If the sub-section could impose any guarantee as to the appointments by other powers it would be most useful.

I think some such qualifying test, if it were possible to devise it and impose it, would be most useful and might mitigate the strong objection I feel, but there is no possible reason for imposing a test upon ourselves, and, moreover, looking at the definition in this act—so far as I know it has not been amended—it does not in the least follow that because a man has held one of these offices, he has that experience in international law which is required for this purpose. Our judges in all these tribunals are much more concerned with municipal than with international law. I think the test is not a good one, and, further, no test is required at all. Surely we can trust ourselves.

Mr. HOLT. This point is really dealt with in the convention itself. Article X stipulates that the judges must all be jurists of known efficiency and of the highest moral reputation. Surely these words, which are to guide both us and other powers ought to be sufficient in the eyes of the Government.

SIR J. JARDINE.¹ Might I suggest the propriety of including in any new list that may be made the judges of such courts as the high courts of India and of the great crown colonies like the Straits Settlements, and in very many maritime places the presiding judges of some of the great consular courts might be as qualified as any others which have been named or suggested?

Amendment agreed to.

Mr. SPEAKER. The next amendment is out of order on this stage, as it imposes a new charge.

Mr. ATHERLEY-JONES. Might I ask a question for the guidance of honourable members. I gather the amendment is out of order, because we have reached the report stage. Would it have been competent for me to move it had it been in committee?

Mr. SPEAKER. The proper place to move it would have been in committee of the whole House when the resolution was first taken. Failing that, the honourable and learned gentleman would have had an opportunity in committee upstairs if he had been fortunate enough to have a place on it.

Clause 25. (Appeals to International Prize Court.)

In cases to which this part of this act applies an appeal from the supreme prize court shall lie to the international prize court.

Mr. JAMES MASON. I beg to move, at the end of the clause, to add the words "save in respect of questions upon which no agreement exists in the Declaration of London."

¹ Liberal.

The object of the amendment is to limit the jurisdiction of the international prize court to a certain category of questions dealt with in the Declaration of London. I think it has always been agreed, maintained, and supported that in order that an international prize court should be successfully set up you must have a code of law which it will be its duty to administer. I think that has never been denied. In this case a code has been devised, called the Declaration of London, which it is thought will be sufficient for the international prize court to administer. But we must remember it has been laid down that where the Declaration of London does not deal with a particular point the international prize court can judge in accordance with the principles of justice and equity—in fact, that the international prize court should make law for itself as it goes along. It appears to me that if appeals are to be allowed on any conceivable subject of international law, apart from any laws laid down, the result may be very injurious to this country, and may lead to a position of considerable difficulty. Let us take, as a case, the contention of a good many nations that the conversion of merchant ships into warships should be legal. We have always refused to acknowledge that, and we still refuse to do so, and that question of the conversion of merchantmen is ostentatiously left out of the Declaration of London and is not in any way dealt with. The international prize court may very easily deal with that question, and make its own laws as it goes along, and in a manner extremely disadvantageous to this country. Holding the view that this country does, that the conversion of merchantmen into warships is illegal, it is quite obvious that if that view is denied by other countries, it will be open for us to treat them as pirates, but the international court may lay down rules which would make it easy for other nations to carry out the conversion. Bear in mind that under this bill we undertake in our own courts here to enforce the judgments of the international prize court, and we may therefore find ourselves obliged to enforce judgments given by the international prize court dealing very leniently with the conversion of merchantmen, while we are maintaining in our own courts that the conversion of merchantmen is entirely illegal. Therefore I think the clause should be so altered as to limit it to matters in the Declaration of London, and to exclude the particular case I have just referred to, and others.

SIR A. CRIEPPS. In seconding this proposal I should like to call attention to article 7, which states that if no positive rule is laid down, then judgment is to be given in accordance with the general principles of justice and equity. The general principles of justice and equity used in that indefinite sense give no test whatever. Of course, when you are dealing with justice and equity applied in accordance with the views of a particular court you know what you

mean. The learned Selden, who is often quoted as an authority, said that a principle of justice and equity, if it is merely the Chancellor's statement, might mean in a great many cases the grossest injustice and the grossest iniquity. If you have no proper test to determine justice and equity, in this case it means the test which the representatives of each country like to apply as regards their own case. There is no such thing here as principles of justice and equity. They all differ. But when you come to the conduct of a court where for a series of years certain principles have been laid down for the guidance and conduct of justice, it is an entirely different thing. In the absence of that it is quite wrong that a court should be given a power of this kind, more particularly an international court, the majority of which is composed of representatives of foreign countries, before which extremely important questions may arise. On those grounds I support the amendment of my honourable friend.

SIR J. SIMON. It was difficult to decide whether my honourable friend (Mr. Mason) was considering the case which may unhappily arise of this country being a belligerent or the case of this country as a neutral, because he raises the question, what would be the result if an amendment is not accepted upon the claim of this country to deal as it pleases with an enemy which chooses to convert merchant ships on the high seas? The answer is that the Declaration of London does not confer upon any power that is belligerent, the right to appeal to the international prize court at all. The rights of belligerents in this matter stand where they did, and so far is it from being to the point to say that the Declaration of London limits our rights, we expressly reserve the view which obtains now, and always has obtained, that the conversion of merchantmen on the high seas is improper, and those who do it against this country must take the consequences of their action. That question does not arise at all. What does arise is, what is the position of a neutral ship if you exclude this element from the jurisdiction of the international court? The situation now is that if, this country being neutral, the owner of a British merchantman considers he has grounds of complaint, because one of two belligerent powers, by means of converted merchantmen, has damaged or sunk his ship, the only tribunal to which he can appeal is not an international tribunal, not his own tribunal, but is the tribunal of the very power which has commissioned the merchantman and authorised the destruction that has taken place. In this instance what prospect is there of a British owner getting satisfaction in the only tribunal to which he can go? If the honourable member's amendment were carried it would remain the only tribunal to which he could go. The real effect of the honourable member's amendment is that the British owner, who has hitherto felt that he was labouring under a gross hardship, would have to

submit to the decision of the foreign belligerent court of appeal against the belligerents themselves who had authorised the act of which he complained. The result of the amendment would be to leave him in that position, whereas we, by the Declaration, and by the proposal carried in this House, provide that he should have, at any rate, this remedy, the only possible remedy, that he can appeal from that hostile tribunal to a court which consists of a majority of neutral representatives. Are we to deprive the owners of British commerce, British ships, and cargoes of that portion of that right of appeal? It is only by confusing the position of this country when we are neutrals with the position of this country when we are at war that any plausible argument can be presented in the opposite direction. If it is true that when this country was at war and might be engaged in fighting for its life, then in those circumstances it would have to submit itself to the belligerent's action by appealing to an international court, there would be immense force in the argument of the honourable gentleman. But that is not true.

The position is that, if this country was at war, it claims a right to deal with its enemy, if that enemy converts merchantmen on the high seas, as it pleases when it pleases, and where it pleases. There is nothing in this act of Parliament or the Declaration of London which in the least degree modifies that; on the contrary, it is the topic on which at the time we were discussing this matter with foreign countries, the Foreign Office and those who represented this country expressly reserved our full rights so to act. As to the position of the country when at peace, with its enormous commerce, surely it is not desired to deprive the owners of our own ships of this right. It might be that at this moment two powers, each friendly to us, are unhappily engaged in war. Surely it is not desired that we should deprive the neutral British owner of the opportunity of taking his case from a hostile court to an international tribunal where, at any rate, he appears before a majority of judges appointed by the neutral powers, and where he is not appealing to the very body which has authorised the wrong of which he complains. The attempt to cut down appeal on those matters which the honourable gentleman includes in his amendment is a proposal which I hope the House will not support. Can anything be more inconvenient than that a neutral appellant should find the jurisdiction of the appellate tribunal is to be narrower than the jurisdiction of the tribunal from which you appeal? In the nature of things you can not have any superior body to decide the exact boundaries of that jurisdiction, and surely the natural and proper thing to do is to say, that the neutral, whether subject or State, should have the right of appeal to this court and to argue his case before the international tribunal by the same arguments which it has urged before the belligerent court.

SIR R. FINLAY. My honourable friend by his amendment deals only with appeals from our own prize courts. Making a supreme prize court in this country is for the purpose of accommodating ourselves to this convention. I suggest that we could not decently give an appeal to any foreign tribunal from the King in Council, and we have created the judges who advise the King in Council to a new court, to be called the supreme prize court. That change has been made in order that an appeal may lie. The question is not one as to an appeal from the courts of foreign countries who are the wrongdoers in the case put by the Solicitor-General. The question is whether we should legalise appeals from our own Privy Council to the international court in certain cases, which I will deal with presently. The Solicitor-General made some remarks which I think require some observations on the subject of the conversion of merchantmen into men of war. He said there is nothing in the Declaration of London about it. Of course there is not. There is a separate convention with regard to this subject, which contains nothing but the most absolute platitudes, and the only thing of any importance in it is the statement that the powers were totally unable to arrive at any agreement as to the circumstances under which conversion might take place on the high seas. But the Solicitor-General forgets that a neutral might bring an appeal to the international prize court on the subject of the validity of a capture by a converted cruiser, and when the international prize court laid down the law, that law as so laid down would pass into a principle or rule, which would be binding on us. The law will be laid down for us, and, with very great deference, I think my learned friend is wrong in saying that our position will not be most seriously affected. It will be affected by this circumstance if this bill passes with regard to the international prize court, that you may have a principle of law settled according to the discretion of that court, without any code, in a manner which would be binding on us.

The Solicitor-General said, "We reserve our rights to deal with those converted cruisers as we think fit." How does the Solicitor-General propose to deal with them? He can do nothing more with them than with any enemy's ship. I remember on the debate on the second reading the Foreign Secretary said, "We will destroy them, we will destroy every enemy's ship." What more could we do? Do they propose any special penalties upon the men found on board those converted cruisers? They have no power to do anything of the kind. Do they propose to try and hang them as pirates? I do not think this subject has really been thought out before this convention. "We reserve our rights" said the Solicitor-General. That reservation of rights is of no use to us at all, because we may have a law laid down in the international prize court which would tie

our hands absolutely. The statement that we are going to destroy them or do something dreadful, which nobody has ventured to approach a definition of, is one that really can carry no weight whatever. I submit to the House that there is a great deal to be said for this amendment. It is in the recollection of everybody that when this convention was entered into for the creation of an international prize court that at that time there was no code whatever, and there was a general outcry in the country. Everyone said it is preposterous to refer questions of such magnitude to an international prize court without providing a code for its guidance, and accordingly an attempt was made to provide a code for its guidance. If it was reasonable to say that an international prize court should not be allowed to act without a code, and to deal with a certain class of subjects, every argument that was used against allowing the court to decide without a code on those subjects is equally valid against allowing it to deal with matters with which that convention failed to deal. The general words which the Government have used about destroying these cruisers or doing something to them which nobody can define do not advance the discussion one little bit.

There is another remarkable thing with regard to this appeal from His Majesty in Council, for that is what it really comes to, although an attempt is made to disguise it by calling it the supreme prize court. Annexed to the convention is a protocol stating that by the Constitution of the United States no appeal lies from the Supreme Court of the United States to any other tribunal. Accordingly there is to be no appeal at all from the Supreme Court of the United States, but an endeavour is to be made to secure the opinion of the international prize court by instituting a fresh suit before it, and damages are to be paid in accordance with the decision of the court. It puts this country in a very different position compared with the United States. In August last an honourable member on this side put a question on this very subject to the then Under-Secretary of State. I will read the question and the very remarkable answer:

Mr. Eyres-Monsell asked the Prime Minister whether his attention has been given to the statements in the Blue Books [Cd. 4554, pp. 103 and 71, and Cd. 4555, p. 253] relating to the proceedings of the naval conference of London at which the Declaration of London was signed; is he aware that the effect of those statements is that, whereas in cases of naval prize an appeal is to lie from the supreme British prize court to the international prize court at The Hague, yet no such appeal is to lie from the United States Supreme Court; and can he undertake that, in this respect, Great Britain will be put in as advantageous a position as the United States before ratifying the Declaration of London or the convention relative to the establishment of an international prize court?

THE UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. McKinnon Wood). The honourable member is no doubt aware that the arrangement foreshadowed in the statements to which he has called attention has been embodied

in the additional protocol of 19th September, 1910, which has now been signed by all the powers signatories of the prize court convention, and which has been laid before Parliament in the Blue Book, Cd. 5554. Under this protocol, the rights secured under the convention, either to individuals or to their Governments are in no way impaired. The alternative procedure by way of a direct action for damages is not, in the opinion of His Majesty's Government, more advantageous than that by way of appeal from the national courts. On the contrary, it involves the risk, with all the attending practical inconveniences, of a conflict between the judgments of the national courts and the judgments delivered in the same case by the international court. It is only by the system of direct appeal that this difficulty can be overcome, and for this reason His Majesty's Government do not consider the system disadvantageous as compared with the alternative procedure under the protocol. [Official Report, 10th August, 1911, col. 1347.]¹

I rather resent the position in which the Privy Council—our prize court of unrivalled authority—is put as compared with the Supreme Court of the United States. The right honourable gentleman seemed to consider it an actual advantage that we should be liable to have our decisions reversed, and be compelled to model our law upon the decisions of the international prize court, whereas the decisions of the Supreme Court of the United States are to stand, the only redress being in a collateral action for damages before the international prize court. The matter deserves attention, and I submit that the position in which the Privy Council is put under the convention is most unsatisfactory. We ought not to have judgments of the Privy Council remitted to a court of this kind to deal with at their pleasure and according to their notions of equity and good sense. This amendment of my honourable friend, I submit, is one which does not deserve the strictures which have been passed upon it.

MR. PEEL. There is one point, perhaps it is rather of a technical nature, which I should have thought was of great importance, and which the Solicitor-General only mentioned at the end of his speech, if, indeed, he did attach any importance to it. It was that it was rather an absurd system to have an international court whose jurisdiction was narrower than the courts from which the appeal lay.

SIR J. SIMON. I did not quite say that.

MR. PEEL. I so understood the Solicitor-General, but I accept his disclaimer. I think that the attitude of the Government to this particular amendment throws a very peculiar light upon their whole attitude in this matter of the Declaration of London. May I remind the House why the Declaration of London came into being at all? This court was agreed to at The Hague. Then it was said, and said very rightly, "What is the use of a court if you do not know what or what law it is going to administer?" The British Government said, "Very well, we will call this conference of London, who will

¹ Cf. *supra*, p. 466.

decide what the law is going to be." After all, if justice and equity were not enough there were plenty of international laws flying about the world, and every court and every country took a different interpretation on a great many points. If justice and equity had been enough it would have been quite sufficient for the Government to say, "We will have an international court, and it shall decide according to the principles of justice and equity." The Government felt that the position was absurd, and that the law must be more closely and more clearly defined, and it was for that reason that they agreed upon something by the Declaration of London. They found that on a considerable part of law they would come to no agreement at all.

The Government go back upon their former position, and say, "Oh, you do not want law; justice and equity is quite enough: this court will be able to decide upon the principles of justice and equity" on a subject which perhaps is more vital to this country than almost any other question involved. I say on this subject, because, of course, our advantage lies in the fact that we have bases all over the world, and as the powers interpret their right under this particular proviso they can put themselves on an equality with us as regards bases—because neutral ports become the bases of the enemy. The right honourable gentleman says, "Oh, yes, when we are belligerents how shall we be worsened? We shall have the right to destroy these vessels or to treat them as pirates." My right honourable friend has dealt very clearly with the question of how you are going to deal with these pirates. After all, is not the proposition impossible? You have cases decided by this court. This court will decide possibly that there is a right to convert in this way on the high seas. Does anyone, this court having laid down the law on this subject, really suggest that this Government, if we were at war, would have a right to treat as a pirate anybody who is merely following out what the law has been declared to be as laid down by this international tribunal? The thing is impossible! And then I take the other side of the question, when we are neutrals. The Solicitor-General says "you gain when you are neutrals, although you may not gain particularly when you are belligerents, because you are confining the power of doing damage, and you have a right to this international prize court, but you would have to look at the composition of the court." The court is composed of representatives of these very powers who refuse to come to any agreement as to the conversion of merchantmen on the Declaration of London. Why? Because they knew right well it would be very much against their interests as naval powers to limit their rights of converting merchant vessels. They knew there was no right which they claimed which put them more on an equality than that. Then the Solicitor-General says you go to this international

prize court. What chance is there of this international tribunal taking the view Great Britain takes?

Mr. HAROLD CAWLEY. The majority of the powers do take that view.

Mr. PEEL. Not a majority of the powers who are to be represented upon this tribunal. I do not wish to make any suggestion about the judges, but after all, when it is the interests of the majority representing the powers at that court to support their right of conversion, do you think it likely that the court is going to take notice of a British claim that these vessels shall not have the power of converting themselves into war vessels, and when they like re-converting themselves into merchant vessels? That is a great blot upon the convention and the court. We are left in a worse position than before, as we may have to declare by the supreme court that this right which we always contested is the true interpretation of national law.

SIR EDWARD GREY. It is absolutely necessary to controvert the arguments used by honourable members on the other side, and to enter a very distinct caveat against the conclusion, which I believe to be absolutely without foundation, that they are laying down. In the first place they are assuming that the international prize court is going to decide that merchant vessels may be converted on the high seas. It is to their interests to make the assumption that they want the international prize court to decide that way, and I do not believe there is any ground for that assumption.

SIR R. FINLAY. I did not assume so.

SIR E. GREY. I was dealing with the speeches that preceded his. I quite agree with what the right honourable and learned gentleman said upon that point, but I do deprecate using language which will be quoted afterwards, that they expect the international prize court would take that view. The right honourable and learned gentleman put the point that the international prize court might not take the view we hold about merchantmen being converted on the high seas. I would like to lay down what the powers of this international prize court are. They are going to decide the rights and merits as between belligerents and neutrals, not as between belligerent and belligerents. If a belligerent catches a merchant vessel converted on the high sea and treats it in any way it pleases there is no appeal whatever to this international prize court. That is a question between belligerents. Honourable members opposite say "Yes, but supposing in a war in which we were not concerned between two powers, one of these powers converted a merchantman on the high sea, and then seized a neutral carrying contraband, and the neutral ship which is carrying contraband carries an appeal to the international prize court against its

seizure by a merchantman converted on the high seas, and the international prize court gives its decision that the neutral is not entitled to compensation—I think that is stating fairly the case the right honourable gentleman is presuming—all the international prize court has decided is what is to stand and hold good in any appeal which comes before it as between a neutral and a belligerent. That is what I wish to lay down, and as far as this country is concerned, we should refuse to be bound in our action as belligerents against belligerents by things which may have been decided as to what is right between belligerents and neutrals. We have made it perfectly clear all through that we were not going to have our views with regard to converting merchantmen on the high seas prejudiced, and I would enter the strongest protest against it being assumed in this House that any decisions which may be taken by the international prize court between belligerents and neutrals are going to curtail our rights when we are belligerents in dealing with belligerents.

SIR R. FINLAY. Does the right honourable gentleman say that if the international prize court laid down principles of law we should not be affected afterwards by them?

SIR E. GREY. I should lay down that the rights between belligerents and neutrals are not to be taken as binding between belligerents and belligerents.

SIR R. FINLAY. That is not the point. My point is, in case the international prize court decided that the conversion of merchantmen on the high seas was lawful, does the right honourable gentleman say we should pay no regard to that principle of law?

SIR E. GREY. I should say certainly as belligerents dealing with belligerents, we were not bound by that, and the whole proceedings all through have made it clear that whatever we agreed to we were not agreeing to anything which is going to circumscribe our rights as belligerents in dealing with belligerents.

Mr. BUTCHER. The doctrine laid down by the Foreign Secretary is of such an extraordinary character that it is certainly new to us on this side of the House. The doctrine which has just been laid down by the right honourable gentleman that we are to pay no respect to the principles of law laid down by the international prize court when we are belligerents dealing with belligerents appears to me to be contrary to every principle of justice. If the Foreign Secretary is right and intends to abide by that it might be advantageous to us, but I think he ought to embody it in this convention and put it in some form in which foreign countries will respect it. If it is simply stated in this House upon the authority of the Foreign Secretary I am sure foreign countries will take very great objection to it when you propose to act upon it in practice. I have to look at

this question from the point of view of British interests and British interests only, a point which I think was insufficiently attended to when the convention was drawn up. From that point of view I should like to say a word or two about justice and equity, which are very pleasant words and sound most admirable. What I want to know is, when the right honourable gentleman says that there is no rule of international law to go upon and that the international prize court has to decide upon the principles of justice and equity, does he mean anything more than this: That this international court will decide exactly as they think is the best? The words "justice and equity"—admirable words—differ enormously in systems of jurisprudence from this to Peru and from Ecuador to Great Britain, and what seems justice and equity in this country according to the settled laws which have been laid down by great judges like Stowell and others may be exceedingly different from what recommends itself to gentlemen nominated by the great powers of Europe, and still more by the smaller nations of the world. When, therefore, we use the words "justice and equity" as governing the decisions of the international prize court, do not let us delude ourselves into the belief that they afford any protection for the reasonableness of their decisions. Let me assume a case where we are neutrals. A belligerent arms a merchantman and sends it out on the high seas to make a capture. The belligerent court decides that the capture is quite right, and the neutral appeals to the international prize court. The international prize court lays it down as a broad principle of international law that it is perfectly right for a belligerent to arm a merchantman, and perfectly right for that belligerent to capture a neutral ship. I say if that is decided as a question of international law we should have to abide by it, and it would most gravely hamper us. That will be the position if the amendment is not accepted.

Supposing the amendment is accepted, the court of the belligerent may decide it is perfectly lawful for an armed merchantman to capture a neutral ship, but that decision would have no effect on our action whatsoever when we were a belligerent. We should be able to act and deal with cases of armed merchantmen on the seas as though no such decision had ever been given. We are not affected by decisions of other nations, and we should pay no attention to them if we thought they were wrong. If, however, you have that principle laid down by the international prize court, I say not only would we be bound to respect it, but we should be most gravely prejudiced by the decision. For those reasons I attach the greatest possible weight to the words of the Foreign Secretary, and if his decision, as Foreign Secretary, is to pay no attention to principles laid down by the court to be constituted under this bill, and

that we are going to be the judge, then I do urge he should make that quite clear to foreign countries, and get their consent before he proposes to act on that principle. I admit if he gets that consent he will remove one of our objections, but, if he does not, it is one of the strongest reasons possible for assenting to the amendment.

SIR E. GREY. The Government recognize we can not bring the proceedings to a close this afternoon. May I appeal to the House, therefore, to get to the end of clause 27 as soon as possible, on the understanding that the Government will give another short day to the further proceedings on the bill?

SIR R. FINLAY. Is the proposal of the right honourable gentleman to give another short day intended to cover the remaining amendments on the report stage and the third reading?

SIR E. GRAY. Yes.

SIR R. FINLAY. The right honourable gentleman should remember that this is practically the first discussion on the naval prize bill, as by arrangement the debate on the second reading was almost entirely confined to the Declaration of London. I would respectfully submit it would not be dealing rightly by the House to give one short day for finishing the amendments on the report stage and the third reading. We should have a day for the third reading alone.

MR. STUART-WORTLEY. It might be unwise and unpatriotic to make any assumption against the decisions of the prize court on the grounds of equity and justice, but we can not shut our eyes to the fact that in the case of powers with small navies or no navies at all their interests will conflict with questions of equity and justice. It may be to the interest of a smaller power to fit out a merchantman capable of being converted on the high seas. It may be said we have reserved to ourselves the power to deal summarily with belligerent vessels of that kind. The Solicitor-General, adding confusion to confusion, said that that was a very valuable thing for us, but I submit that it may go against us, as in the case of a British private owned ship being sunk by the converted cruiser of another power and taking his case to the international prize court, the highest probability is he would be reminded of that power reserved by the British Government.

LORD C. BERESFORD. This is the most important amendment in the whole bill. It is this question of converting merchant ships on the high seas and reconverting them at will into merchant ships that started the agitation in the country. I think, in the light of to-day's debate, that the position looks worse than ever. The Secretary of State told us that, provided we are neutral and two belligerents are fighting, if one chooses to arm her merchant ships and sink our vessels there would be nothing for us to do. But suppose the Turks, so armed 6 ships and sunk 30 of our ships in the Mediterranean,

should we have nothing to say? I venture to think we should not stand it; we should repudiate such a position, and we ought not to assent to such a proposal as this, knowing that under certain circumstances we would repudiate it. I do not think for one moment that this country would stand such a proceeding as that which, according to the right honourable gentleman, could occur under these courts. The right honourable gentleman says: "Oh, we are all right, if we are belligerents." How are we all right? And what are you going to do with these people and the ships which are armed at sea?

MR. H. CAWLEY. What would you do with them?

LORD C. BERESFORD. I would hang them as pirates. I should probably be hanged myself. They are pirates, and you are legalising pirates, and I do not think your officers and men will stand it; they would see what ought to be done, whatever their orders were. The honourable gentleman asked me what I would do, and I have told him pretty straight. On 4th May I asked the First Lord of the Admiralty of those days whether, in view of the official statement that the Government do not admit the right of foreign nations to convert merchant ships into men-of-war on the high seas, he will state to the House what action the Government will take if foreign merchant ships are so converted, and whether, in the event of such ships preying upon our mercantile marine, they will be treated as pirates when caught? What did the right honourable gentleman reply? For once he was not evasive. I must not say too much against him, because he is not here. [Honourable members: "Yes he is."] Where is he? What did the right honourable gentleman say? "The action to be taken will be a matter for the decision of His Majesty's Government when the occasion arises." That, to a landsman, might be very clever, but to a seaman it is important to know what he meant. Our argument and that of those who have been excited about this question of the Declaration of London is that the trade routes are not properly defended, that you have not got enough cruisers, and that you had 60 and now you have 22. If these ships are armed, and they take the trade routes, we cannot do anything. If the trade routes are snipped you will get a panic in this country, and what would be the use of sending out afterwards? It is like putting a fire service into a house after it is alight. If the trade routes are not guarded, they may be cut by these pirates, and then the right honourable gentleman says he is going to do something afterwards. That is the real danger. You had a strike the other day in this country, and I am informed that you were within two days of starvation in London. You would have had riots if you had had starvation in London. You have no right to be in that position at all so far as your defences are concerned. This is the most important clause in the whole bill, and this is the

most important amendment that has been raised, and it raises the whole question of what I describe as piracy. Whether you are a belligerent or whether you are a neutral you are almost in equal danger with regard to your trade routes, because they are not properly defended, and I shall certainly vote for the amendment.

Mr. SANDYS. I can not understand the right honourable gentleman's statement that in the bill as it stands there is nothing to curtail our rights as belligerents. It seems to me this is the most important question of all as to our position as belligerents. Though the right honourable gentleman may say it does not curtail our right, our actual interests undoubtedly must be seriously affected by the action of armed merchantmen attacking neutral vessels engaged in carrying food to this country. There is no question that in the event of war this neutral commerce between foreign countries supplying us with food would be very largely increased indeed. A large quantity of our food supplies would come from neutral vessels, and, therefore, if those neutral vessels were liable to attack by the armed merchantmen of either of the belligerents, it is perfectly obvious that although our rights might not be curtailed, our national interests in the result of war might be very largely affected unless the amendment is accepted.

Question put, "That those words be there inserted in the bill."

The House divided: Ayes, 64; noes, 136.

Clause 28. (Enforcement of Orders of International Prize Court.)

The high court and every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the international prize court in appeals and cases transferred to the court under this part of this act.

Mr. ATHERLEY-JONES. I beg to move, to leave out the clause.

SIR E. GREY. I would suggest to the honourable member that he should develop his argument when we resume consideration of the bill. I beg to move, "That the further consideration of the bill, as amended (in the standing committee), be now adjourned."

Question put, and agreed to.

Bill, as amended (in the standing committee) to be further considered upon Monday next (6th November).

Whereupon Mr. Speaker, pursuant to the order of the House of 24th October, proposed the question, "That this House do now adjourn."

Question put, and agreed to.

Adjourned accordingly, at 22 minutes after 5 o'clock, until Monday next, 6th November, 1911.

NOVEMBER 8, 1911.¹

INTERNATIONAL PRIZE COURT.

Lord Charles Beresford asked whether, if two other countries are at war, in the event of one country arming her merchant ships on the high seas and sinking several of our neutral vessels without trial, we should have to abide by the decision of the international prize court in the event of such decision being against us.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. Acland). In the absence of an international prize court the owners of British vessels, sunk in such circumstances as the honourable and gallant member describes, would have no legal remedy except recourse to the national prize court of the belligerent, whose decision would necessarily be adverse to any claim for compensation for acts which, according to the law administered by such a court, would be lawful. The establishment of an international prize court would enable British claimants to bring their cases before a tribunal which would not be bound to take the same view as to the legality of the proceedings, and might reverse the decision of the national court. This would be a pure gain to the neutral owners. Should, on the other hand, the international court uphold the decision of the national court, the claimants would be no worse off than they are now. Whether, under the circumstances contemplated by the noble lord, we should depart from an attitude of neutrality and go to war is a point that must be decided by the Government that is in power at the time.

NOVEMBER 9, 1911.²

NAVAL PRIZE BILL.

Mr. Hunt asked whether, under the naval prize bill, the international prize court will have power to decide whether, in the case of war between two nations, when we are neutrals, the belligerents can lawfully turn their merchant ships into commerce destroyers in any part of the world, and use them to the same extent and in the same way as their ordinary warships to capture or sink British merchant ships; and whether, if the international prize court so decides, we shall be bound by its ruling.

SIR E. GREY. The question has been answered by the reply to the noble lord the gallant member for Portsmouth yesterday.

Mr. Hunt asked whether, under the naval prize bill, if the international prize court decides that merchant vessels turned into com-

¹ 30 H. C. Deb., 5 s., 1627.² 30 H. C. Deb., 5 s., 1790.

merce destroyers can be lawfully used by a nation at war with us in the same way as its regular warships to capture or sink our ships or neutral ships, it will be impossible for our shipowners or the owners of neutral ships to get any recompense or redress for ships captured or sunk by these converted pirate vessels; and will this have the effect of preventing foodstuffs being imported and therefore of producing famine and starvation in Great Britain.

SIR E. GREY. If Great Britain is at war, the legality of the capture or destruction of British merchant vessels cannot become the subject of a decision by the international prize court at all. As regards the position of neutral owners, I would refer the honourable member to the answer given yesterday to an inquiry by the noble lord the gallant member for Portsmouth. The answer to the last part of the question is in the negative so long as the British Navy retains command of the sea.

Mr. HUNT asked whether, under the naval prize bill, in case we were at war with another nation, the international prize court can decide that our enemy has acted lawfully in turning his merchant ships into commerce destroyers, and in using them to the same extent and in the same way as his ordinary warships to capture or sink our merchant ships and neutral ships carrying foodstuffs to this country; and if the court decides it to be lawful, should we be bound by this ruling.

SIR E. GREY. Action taken by an enemy against British merchant vessels when we are at war can not come before the international prize court at all in respect of the ship. The international prize court could, of course, give decisions as regards neutral vessels, if appeals were brought before it. Such decisions would not affect our action as belligerents in dealing with enemy's ships.

Mr. HUNT. Are we to conclude that the Government is setting up an international prize court whose ruling they have no intention of obeying? Is not that very like the preamble of the veto bill, which was for ornament and not for use?

SIR E. GREY. I do not follow the comparison. The international prize court deals with questions arising between belligerents and neutrals. As I explained at comparative length the other day in debate, we do not regard that as affecting our rights as belligerents dealing with belligerents. Questions between belligerents and neutrals are one thing, and questions between belligerents and belligerents are another. Questions between belligerents and neutrals come before the international prize court, but not questions between belligerents and belligerents.

Mr. HUNT. Will the right honourable gentleman make that plain to other nations, because nobody else understands it?

Mr. BUTCHER. Has the right honourable gentleman yet informed any of the foreign powers that it is his intention to treat the decisions of the international prize court in the manner suggested?

SIR E. GREY. We have made public our statements with regard to what our view would be as to merchant vessels converted on the high seas into warships, if we were at war. We do not propose to make that action dependent on the consent of other nations at all.

DECLARATION OF LONDON.

Mr. Hunt asked whether, in view of the fact that the dominion premiers were urged not to oppose the Declaration of London in order to help to bring about the arbitration treaty with the United States, the right honourable gentleman can now say whether the American Senate has refused to agree to allow all disputes, whether of honour or territory, to be settled by arbitration; and, if so, in view of the fact that nearly all our naval, military, shipping, and commercial authorities are strongly opposed to the Declaration, the Government will reconsider their decision to ratify it.

SIR E. GREY. None of the several statements put forward by the honourable member are facts. The answer to his inquiry is in the negative.

Mr. Hunt asked whether, if the Declaration of London is ratified, there is any port in Great Britain when we are at war to which any foodstuffs except nuts could be sent in neutral ships without any risk of these ships being captured or sunk by an enemy's warship or by their merchant ships which had been converted into commerce destroyers.

SIR E. GREY. There will be such ports if the Declaration of London is ratified and its rules observed by belligerents and neutrals; it is impossible to say what the state of things may be without the Declaration of London.

Mr. HUNT. Can the right honourable gentleman say for certain that there will be any single port in this country that will not be considered as being in connection with the military and naval forces, and that, therefore, vessels conveying foodstuffs intended to go to the army and navy would be liable to capture?

SIR E. GREY. I gave an instance before of what it would not be in accordance with the Declaration of London to declare a fortified base. At the present moment everything is uncertain, so far as treaties can do it; but, under the Declaration of London, there will be a certain amount of certitude introduced.

Mr. HUNT. Does the right honourable gentleman know that the German authorities have laid down that every port in Great Britain is

in connection with the military and naval forces, and that, therefore, all ships coming to British ports will be liable to capture?

SIR E. GREY. I shall be very much obliged if the honourable gentleman will give me the information on which that statement is founded. It is quite new to me.

LORD C. BERESFORD. Is it clearly specified that the ports are to be fortified places? I am under the impression it is not.

SIR E. GREY. The whole question was fully gone into in the debate on the Declaration of London, and if the noble lord refers to the speeches made on behalf of the Government he will see what is their view as regards its interpretation.

BELLIGERENT RIGHTS.¹

Mr. Butcher asked the Secretary of State for Foreign Affairs whether he will specify the despatches or other communications with foreign powers in which he has made it clear that this country will not agree to anything which is going to circumscribe our rights as belligerents in dealing with belligerents in regard to the arming of merchantmen on the high seas; and whether he will lay upon the table of this House any documents relating to this matter which have not already been laid.

SIR E. GREY. There has been no occasion to address any foreign power on the subject, as the action that His Majesty's Government might take in such a contingency will not depend upon the consent of other powers. All questions as to the treatment by a belligerent of enemy vessels are excluded from the jurisdiction of the proposed international prize court, with the exception of the special cases enumerated in article 3 of the prize court convention of 1907, which do not touch upon the point now raised.

Mr. BUTCHER. Do I understand the right honourable gentleman to say that he has not made clear to the other powers as yet the mode in which we are going to treat decisions of the international prize court?

SIR E. GREY. I have already said that the decisions of the international prize court will be of cases between belligerent and neutral. The case we should have to consider would be between belligerent and belligerent if we were at war with another power. I am bound to reserve, as far as the present Government and future British Governments, full liberty to make whatever announcement they think fit, if they should happen to be at war, as to how they should treat merchant vessels converted on the high seas.

¹ 30 H. C. Deb., 5 s., 1795.

Mr. BUTCHER. Does the right honourable gentleman intend to address a despatch to the powers, the signatories to the convention, to make that quite clear?

SIR E. GREY. I think to announce in advance or tie the hands of this Government or tie the hands of any future Government with regard to the course they might think fit to adopt, if unfortunately we were at war with another power, would be very unwise.

NOVEMBER 13, 1911.¹

DECLARATION OF LONDON.

Captain Faber asked the Secretary of State for Foreign Affairs whether, in the event of this country being at war, vessels laden with grain could proceed without molestation to all English ports or only to those which were not bases of operations.

The UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS (Mr. Acland). The risks run by neutral grain ships will depend on the rules of contraband recognised or issued at the time by the enemy. At present it is impossible to say what rules would be adopted. If the Declaration of London is in force, foodstuffs will be treated as conditional contraband only, and any vessel carrying grain will be liable to capture if the grain is destined for the British armed forces or for a British Government department. The circumstances in which such destination may be presumed, subject to proof to the contrary are, as the honourable and gallant member is aware, laid down in article 34 of the Declaration.

CAPTAIN FABER. Is it not a fact that in an island like England, all the harbours are bases of operations?

Mr. ACLAND. It is not a fact.

Mr. SPEAKER. That is a matter which has been discussed at some length.

NOVEMBER 16, 1911.²

DECLARATION OF LONDON.

Mr. Hunt asked whether, in view of his expressed wish for quotations from German authorities, his attention has been called to the fact that the two German authorities, General von Caemmerer and General Baron von der Goltz, have laid it down specifically that the term base can not be restricted to one district, but must mean the whole area of a State connected with railways; and does this necessarily mean that under the Declaration of London all neutral as well

¹ 31 H. C. Deb., 5 s., 3.

² 31 H. C. Deb., 5 s., 499.

as British ships bringing foodstuffs to this country would be liable to be captured or sunk by an enemy's warships, or by his merchant ships converted into commerce destroyers.

SIR E. GREY. I have seen the quotations referred to. I am unaware of the context from which they were drawn, and can, therefore, form no opinion as to their exact bearing upon the definition of the word "base" in the sense in which it is used in article 34 of the Declaration of London. In no case do His Majesty's Government consider that the effect of article 34 can be that suggested in the last part of the honourable member's question.

MR. HUNT. Is it not a fact that at the court of arbitration at Geneva in 1872 our own representative—

MR. SPEAKER. The honourable member seems to credit the Foreign Secretary with omniscience. He really must give notice of a question of that kind.

NOVEMBER 21, 1911.¹

DECLARATION OF LONDON.

MR. HUNT asked the Secretary of State for Foreign Affairs whether, in view of the fact that our representative, Sir A. Cockburn, laid it down at the court of arbitration at Geneva in 1872 that a base of operations was a port or waters from which a ship of war could watch for any enemy, he can say whether there is any port in the United Kingdom where foodstuffs are landed from which one of our warships could not watch for any enemy.

SIR E. GREY. The honourable member has omitted the greater part of Sir A. Cockburn's observation on this point, and the deduction that he apparently draws is erroneous. The presumption of article 34 of the Declaration of London does not, moreover, arise with regard to a port which may, but with regard to a port that actually does, at the time, serve as a base of operations. Apart from the question of what authority may be said to attach to Sir A. Cockburn's observations, they could not have contemplated the situation as it would be affected by the Declaration of London, and have therefore no bearing upon what ports would be open under it for unrestricted importation of food supplies in neutral vessels.

MR. HUNT asked the right honourable gentleman whether he could say whether there is anything in the Declaration of London to prevent an enemy in case of war from deciding that base means any port in the United Kingdom in railway connection with any British military forces or in railway connection with any contractor who supplies or has supplied goods to the military or naval forces of the

United Kingdom; and, if not, whether an enemy's warships and merchant ships converted into commerce destroyers could capture or destroy any British or neutral ships carrying any foodstuffs except nuts to any port in the United Kingdom.

SIR E. GREY. There are at present no treaty stipulations preventing an enemy from taking the course suggested. Under the Declaration of London, however, such a course is inadmissible. Foodstuffs may, under article 24, be treated as conditional contraband, and will as such be liable to seizure only if destined for the armed forces or a Government department of the enemy, in contradistinction to absolute contraband, which is so liable if destined for any part of enemy territory. If the interpretation suggested by the honourable member were correct, then foodstuffs would be subject to the treatment, not of conditional, but of absolute contraband, which is directly contrary to the provisions of article 33.

MR. HUNT. What would be the use of an international prize court a year or two after we were starved into surrender?

SIR E. GREY. That point was dealt with in the debate on the prize court bill. I can not see that it arises. There is nothing about a prize court in the question.

MR. HUNT asked whether, in view of the fact that the court of arbitration at Geneva in 1872 decided that our colonial port at Melbourne, Australia, was a base of operations for the United Kingdom, the Government will refuse to ratify the Declaration of London until an undertaking has been obtained from foreign countries that at least one port in the United Kingdom shall not be held to be a base for supplying food for the military forces in the United Kingdom.

SIR E. GREY. The honourable member's question does not accurately convey the decision of the tribunal. The award decided, among other things, by a majority of one, that Great Britain had failed to fulfil the duties prescribed by the second of the rules of the Treaty of Washington, in the case of the Confederate cruiser *Shenandoah*. The vessel had been allowed to take in 300 tons of coal at Melbourne, and it was considered by the bare majority of the arbitrators that this was equivalent to permitting her to use the port as a base for her operations. The particular interpretation thus given to the rule was formally repudiated by Her Majesty's Government, although, of course, they acknowledged the binding force of the award in the actual case. There is, however, no real connection between the question of allowing a belligerent cruiser to use a neutral port as a base of operations—a proceeding which has always been held by all nations to be contrary to international law—and the question of food supplies in neutral bottoms consigned to a port of a belligerent country.

Mr. HUNT. Can the right honourable gentleman answer the last part of the question? Is there a single port in the United Kingdom that he can guarantee will not be held to be a base of supply?

SIR E. GREY. The question on the paper is what I can say on that point in view of the decision of the court of arbitration at Geneva. My answer points out that the decision of the court of arbitration at Geneva has no bearing on the questions as to what ports would be open.

Mr. HUNT. Is not the question on the paper this: Is there one single port in the United Kingdom that the right honourable gentleman can say is safe for our food supply to come in?

SIR E. GREY. All commercial ports which are not used as a base of operations would, if the provisions of the Declaration of London are observed, be open for food supplies. The honourable member, in his question, has mixed up two things which have nothing to do with each other. If he will separate them, and put the questions separately, I will answer them.

NOVEMBER 27, 1911.¹

DECLARATION OF LONDON.

Mr. Hunt asked how a foreign power with which we were at war could know that there were no armed forces of any kind at any port in Great Britain; and, failing such definite knowledge, would not a foreign power be justified in treating any port as a base of supply for our armed forces.

Mr. ACLAND. The honourable member suggests that an enemy might treat any British port as a base of supply for our armed forces, regardless of whether there are in fact any armed forces to supply or not. This is not a proposition to which His Majesty's Government can subscribe.

Mr. HUNT. Can the right honourable gentleman say whether foreign powers would not take that view, in case there might be armed forces in the port?

Mr. ACLAND. We believe foreign powers, like ourselves, would be sensible enough not to make an interpretation which is not within the meaning of the words to which they have agreed.

Mr. Hunt asked whether there is any port in Great Britain where foodstuffs are landed at which any of our warships have not or might not call for supplies of some sort; and could an enemy fairly claim under the Declaration of London that all these ports were therefore all bases of supply for our naval forces.

Mr. ACLAND. The answer is in the negative.

Mr. HUNT asked whether the Foreign Secretary has obtained any definite assurance from any foreign power which has signed the Declaration of London that it will place upon articles 34 and 35 the same construction which he puts upon them himself; and, if not, what security has this country under the Declaration of London that there is any port in the United Kingdom which receives foodstuffs capable of being forwarded inland by rail, and therefore to our armed forces, and which therefore may not be construed by an enemy with whom we were at war as a base of supply.

Mr. ACLAND. It has already been explained more than once that the articles are not open to the interpretation which the honourable member desires to place upon them. If His Majesty's Government were not convinced that this view was shared by all the signatories of the Declaration, they would not have advised its ratification. It has also often been pointed out that previous to the Declaration of London no security such as the honourable member desires has existed.

Mr. HUNT. May I ask whether, in view of the fact that the Secretary of State can not guarantee that any port in the United Kingdom would not be considered a base of supply, is it not time that the right honourable gentleman should acknowledge he has made a mistake, in order to save us from starvation in time of war?

Mr. ACLAND. I think the honourable gentleman had better put down yet another question on the matter.

NOVEMBER 30, 1911.¹

DECLARATION OF LONDON.

Mr. Hunt asked whether, in view of the fact that he can not guarantee that there is a single port in the United Kingdom which, under the Declaration of London, a foreign power might not hold to be a base of supply for our armed forces, he will reconsider his decision and refuse to ratify the Declaration of London.

SIR E. GREY. There would be more guarantees with the Declaration of London than without; it would therefore be undesirable to reconsider the decision.

Mr. HUNT. May I ask the right honourable gentleman whether, in view of the fact that we have no definite assurances from any foreign power that they will put the same construction upon articles 34 and 35 that he does, is he going to risk the starvation of our fleet in time of war on an unknown decision?

Mr. SPEAKER. Surely that is a matter for argument; the honourable member is raising a debate.

DECEMBER 5, 1911.¹

DECLARATION OF LONDON.

Mr. Hunt asked whether, if the Declaration of London is ratified, neutral vessels carrying foodstuffs to Bristol, Liverpool and Glasgow will not be liable to be captured or sunk when this country is at war.

Mr. ACLAND. Under the Declaration of London, neutral vessels will not be liable to capture, in a war in which Great Britain is a belligerent, merely on the ground that they are carrying foodstuffs to the particular ports named, unless these are at the time used as a base by the British forces, in which case the cargo would be presumed to be destined for those forces, unless proof to the contrary was forthcoming.

Mr. HUNT. May I ask the honourable gentleman how he can expect a nation will keep an indefinite treaty during war when the Americans will not keep a definite treaty during peace?

Mr. SPEAKER. Order, order. How can the honourable gentleman be expected to answer that question?

Mr. HUNT. He can not answer it, I know.

Mr. ASHLEY. But surely these three ports will be used as bases?

Mr. ACLAND. That is a matter of opinion. It is one which will be decided when the time comes. We can not be expected to answer the question now.

Mr. HUNT. Is the starvation of this country to be treated merely as a question of opinion?

Mr. SPEAKER. Order, order. That is not a matter to be dealt with by means of question and answer.

Mr. EYRES-MONSELL. I desire to ask the First Lord of the Admiralty a question of which I have given him private notice, namely, whether he has consulted the new Board of Admiralty as to the advisability of ratifying the Declaration of London, and, if so, what opinion they have expressed; and, if not, whether, before proceeding further with the naval prize bill, and in view of its close connection with the Declaration of London, he will take steps to ascertain the views of the new Board of Admiralty as to the effect of the Declaration on our position both as belligerents and neutrals?

The PARLIAMENTARY SECRETARY TO THE ADMIRALTY (Dr. Macnamara).² My right honourable friend the First Lord has asked me to say that, as has been repeatedly stated by his predecessor in this House, the Admiralty were represented at the international naval conference which led to the Declaration of London, and its provisions were submitted to and approved by the Board of Admiralty at the time. Further, as stated by the Prime Minister in June last,

¹ 32 H. C. Deb., 5 s., 1203.² Liberal.

the Declaration has been approved by His Majesty's Government after the fullest examination.

Mr. GRETTON. May I ask the right honourable gentleman if he is aware that on 14th February last the late First Lord stated that the question of the Declaration of London had not been before the Board of Admiralty, but that he must assume it had been approved because the Admiralty was represented at the conference?

Dr. MACNAMARA. What did happen was this. On 28th June, in reply to the honourable and learned member for York (Mr. Butcher), who asked whether the Board of Admiralty was consulted as to the Declaration of London before it was signed, the First Lord of the Admiralty (then Mr. McKenna) replied:

Yes, sir; the Board of Admiralty decided in support of the Declaration of London, and it has been stated so repeatedly.

The honourable member for York then asked:

Was the First Sea Lord asked to give his opinion?

And the answer was—

Yes, sir.

Mr. EYRES-MONSELL. Will the right honourable gentleman answer my question? Has the new Board of Admiralty been consulted?

Dr. MACNAMARA. I can say on behalf of my right honourable friend that in his view no useful purpose whatever would be served by submitting this matter to the new Board, which, as a matter of fact, was only read in this very day.

Mr. BUTCHER. Suppose it should turn out that the new board was entirely opposed to the Declaration of London?

Mr. SPEAKER. This is a hypothetical question.

Mr. GRETTON. Are we to understand that the approval of the board, which is announced as having been stated to the House on the 28th June last, was in the sense of the answer to a question on the 21st February, in which the First Lord stated that any matter submitted to him by a member of the board, and receiving his approval, had the approval of the Board of Admiralty?

Dr. MACNAMARA. The answer is that the Board of Admiralty decided in support of the Declaration of London. This has been stated repeatedly.

COLONEL HICKMAN.¹ Is the House to understand that the Admiralty have not consulted the new board and have no intention of doing so?

Dr. MACNAMARA. The new Board of Admiralty was only read in this very day, and in the opinion of the First Lord no useful purpose would be served by consulting it.

¹ Conservative.

Mr. MACCALLUM SCOTT.¹ Does the right honourable gentleman intend to consult the new board as to the tactics of the Battle of Trafalgar?

Mr. BUTCHER. Are we to understand that the Government finally decline to consult the new board on a matter vital to our interests at sea?

Mr. SPEAKER. The right honourable gentleman has already said so twice.

DECEMBER 7, 1911.²

NAVAL PRIZE BILL.

As amended (in the standing committee) further considered.

Clause 28. (Enforcement of Orders of International Prize Court.)

The high court and every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the international prize court in appeals and cases transferred to the court under this part of this act.

Mr. ATHERLEY-JONES. I beg to move, to leave out clause 28. Although I can not expect the Government to accept the amendment in that form, yet I hope in the later and equally effective form which it takes in a subsequent amendment of mine, it will receive acceptance at the hands of the Government. I must apologise to the House for the necessity upon my part of dealing with matters which are undoubtedly of a somewhat technical character. The question would really be very much better dealt with upstairs in committee. To address on this subject a body of men who are unhappily not all lawyers, renders one's task extremely difficult, but I shall endeavour to state as shortly and as clearly as I can the propositions I advance in support of my amendment. In doing so, I shall avoid all references except what is immediately pertinent to the Declaration of London. In common with many of my friends on both sides of the House, I regard the Declaration of London as an impolitic measure, disadvantageous to the maritime and general commercial and naval interests of this country; but I shall not attempt to enter upon, nor would it be right for me to do so, those general grounds in support of my amendment. It is a cardinal principle of the constitutional law of this country which has never received invasion, that the Crown cannot by a treaty interfere with the private rights of citizens, unless

¹ Liberal.

² 32 H. C. Deb., 5 s., 1597.

the sanction of Parliament is obtained to that treaty. That is a principle which not only has received the sanction of every jurist of authority, but has never been seriously assailed, and obviously it is a principle which must be regarded as reasonable. If the Crown could, by treaty with a foreign power, impinge upon the rights of its own citizens, there would be an exaltation of the prerogative of the Crown which would override Parliament; and our settled laws, both common law and patent law, might be dispensed with at the will of the Crown through the machinery of a treaty.

My charge in the first place against the Declaration of London is that it does by its provisions, both potentially and actually, interfere with the private rights of citizens. If I establish that proposition, I think the law officers of the Crown will agree with me that it is an unconstitutional proceeding that the provisions of that treaty should not have been laid before Parliament and the subject of them sanctioned. If that is conceded, as it must be for the very obvious reason which I have already stated, we come to consider the next point, which is in what way can the Government evade the responsibility of submitting to Parliament those matters in which the right of citizens are affected, and on which *ex hypothesi* the judgment of Parliament is requisite. The Government have done it in this bill by clause 28. By that clause they assert that whatever the decree of the international court may be, that, as a purely ministerial function, the municipal court of this country, the Court of Admiralty, shall enforce such decree, order or judgment. So that whatever order, judgment, or decree may be brought by the Crown, or if not by the Crown, by any other vicarious authority, for enforcement by the high court of this country against the interests of the private citizen, and contrary to our own municipal law—I emphasise that point—that decree, judgment, or order must be, as a purely ministerial act, enforced by the high court of this country.

Suppose, *ultra vires*, the international court makes a decree which affects the right of a private citizen in this country. The high court of this country—that is, the Court of Admiralty—can not go behind that decree. It can not inquire whether or no it clashes or coincides with the municipal law of this country. It will be obliged to enforce that decree under the terms of the clause. That has hitherto been uncontroverted, and I venture to think will be an uncontrovertible proposition. It may be asked when the Crown has made a treaty does not that treaty bind a State? It does not bind the private citizen in respect of his private rights. Supposing—I put the matter hypothetically—this international court were, apart from this clause with which I am dealing, to found a judgment or make a decree which prejudicially affected the interests of the private citizens of

this country. The courts of this country would not enforce it, and ought not to enforce it. I do not want to be too technical, but that matter was discussed in 1893—I agree at not very great length—before one of the most distinguished judges, whose personal friendship I had the honour to enjoy, the late Lord Herschell. The case is one with which my honourable and learned friend is no doubt familiar. It was *Baird v. Walker*, and was discussed by the Privy Council.

Lord Herschell laid down the proposition, which he suggested was an absolutely uncontroversial one, that the Crown could not by treaty interfere with private rights. He made a reservation, and a very proper reservation, in the case of a treaty of peace. *Ex suprema lex* it might very well be in the interests of the nation at large that it might be necessary in the case of a treaty of peace to interfere with the private rights of citizens. But, with that single exception, Lord Herschell laid it down authoritatively that it would be impossible, unconstitutional, and illegal for the Crown, by means of a treaty, to interfere with the private rights of the citizen. If I have made myself intelligible in what I may describe as the major proposition of my case, I come to examine whether firstly, this treaty does actually, and, secondly, potentially, interfere with the rights of private citizens. I say it does. I will give one or two illustrations as to where the private rights of the citizen are interfered with. If the House interferes with the rights of private citizens, the particular matters upon which it so interferes ought to be submitted to the House for the House to consider whether it is right or wrong, desirable or undesirable, that the private rights of the citizen should be infringed upon. It is not enough by an omnibus clause to say: "You shall enforce the decree of an international tribunal." You must go a step further. You must say in what respect those private rights of the citizen are to be interfered with. My contention can be simplified, perhaps, to satiety, by illustrations.

I have expressed in this House, and also in the pages of reviews and journals, very strong opposition before to that article of the treaty, which alters the conditions under which conditional contraband is taken to an enemy's territories. I have submitted to this House and elsewhere that that is a very complete alteration in international law, with regard to conditional contraband and antithetical to the interests of this country. The municipal law of England has always said that you may carry conditional contraband to the enemy's territory; that is to say, a neutral may convey conditional contraband—for instance, foodstuffs—to an enemy's territory, so long as it does not convey it for the armed forces of the enemy or to a port of military or naval equipment. The alteration, I will not say the law, but the conventional alteration, made by my right honourable friend

says as regards a port that it shall be a place that may, according to its relevance, be "a base of supply." We have contended that that covers commercial ports like Hull, Liverpool, or Bristol. The right honourable gentleman the Secretary of State for Foreign Affairs, in a letter which he addressed to the Glasgow Chamber of Commerce, admitted that it was impossible to predicate whether or no the international court would take the view that a place like Liverpool, Bristol, or Hull was or was not "a base of supply." We stand, therefore, in this position: that one of our neutral vessels carrying corn, other foodstuffs, or any other article of conditional contraband to a commercial port of Germany or France which might be a belligerent, and not to a port of naval or military equipment, might be captured and condemned by the municipal courts of the nations. So far no great mischief has been done. So far we have not had a violation of the principles of international law which has hitherto obtained in this country, and we might appeal to diplomatic action to rectify that mischief.

Diplomatic action is suspended for a period of 12 years until notice is given to terminate the treaty. A British merchant ship has been seized upon the high seas, carrying, in accordance with the law of England as it is now and as it has ever been, innocuously conditional contraband to a commercial port—it has been seized and condemned by the municipal court of the belligerent country, and the only remedy afforded to the shipowner, the shipper, or the merchant is to appeal to the international court. So far the treaty has made no inroad upon the rights of the private citizen. The aggrieved shipowner, shipper, or merchant carries his case to the international court of appeal. I make no comment whatever upon the ridiculous composition of the international court. The international court confirms the judgment of the municipal court of the belligerent. Still, no harm is done. The British merchant must lose his cargo, and the British shipowner must lose his ship. But the court proceeds to do something more. It proceeds to do that which under present international law you can not do, but which there is, I say, no power effectively to do. It can order the merchant who appeals to pay the costs of the trial, to pay what is called, I think, in the treaty, a tax for the maintenance of the municipal court which decided the case. The judgment of the international court is then brought down to our High Court of Admiralty. The judges there are asked to execute this judgment, and make this unhappy British merchant pay the tax. The members of the High Court of Admiralty have before them some representative of the aggrieved shipowner or merchant. Counsel for the aggrieved shipowner or merchant says, "You are asked to enforce a law which is directly in conflict with the prize

law of this country: you are asked to say that the ship is *ex concessio*, has gone into a commercial port, is liable to capture and condemnation, and you are asking to recognize the decisions of the international court and to make a private citizen pay the cost of a proceeding upon a judgment which is wholly in conflict with the principle of British international law." The Court of Admiralty will say, it is bound to say, "We are not in a position to inquire into the matter; we are here namely to perform an administrative function under the terms of clause 28," and a British merchantman must pay costs and also pay a tax, for I can call it by no other name, which is imposed by one important clause in the treaty of London. The result is that while a British merchantman at the present moment is absolutely free from all obligation to pay—he may lose his ship or he may lose his cargo, but he is not liable to pay costs by the laws of this country—yet under this section he is to be compelled to pay such costs. I rely, not only upon my own judgment, but upon the judgment of many jurists in this and other countries when I say that that is an infringement of the rights of private citizens. You are imposing upon British merchants the necessity of obeying the orders of this court without having an opportunity of defining any of the conditions on which a ship may be seized, and in doing that you are in conflict with well-established principles from the time of Stowell downwards to the Court of Admiralty. I will give another illustration; honorable members who are not lawyers, but who may be shipowners, know the doctrine of salvage. I am stating the present law. Assuming we are a neutral power, and that a British ship—that is to say, a neutral ship—is captured by the enemy on the ground that it is carrying contraband to a port of the enemy which the international court regards as an unlawful operation on its part, and assume that that ship is recaptured by a British warship, the British warship is entitled to salvage, if that ship has been lawfully captured, but only in the event of its having been lawfully captured.

MR. HOLT. If this British ship was originally neutral, how could it be lawfully captured?

MR. ATTIERLEY-JONES. I am assuming that a British ship carrying contraband may be captured, and it may escape, or it may be rescued by a British ship; but perhaps it would be better to take a case where we are in a state of belligerency and of a ship being captured under these circumstances. I am obliged to my honourable friend for his interruption. Supposing we are belligerents and that a ship has been captured by the enemy and that that ship has been recaptured by a British ship—and there are cases in which the question of recapture has been discussed in the courts—then a man-of-war can proceed against a British merchant ship for salvage but it can only

recover salvage in the event of the ship having been legally captured; that is to say, that the ship was going according to the principle of the international law to a port to which it ought not to go. But supposing according to the municipal law of this country that that ship was not going on an illegal voyage but was going on a perfectly legal voyage, then the doctrine of salvage does not apply and the salvor will not be entitled to salvage. What takes place then? The British court says, "According to the principle of our law this ship was going upon a perfectly legal voyage and therefore you are not entitled to salvage," but, on the other hand, the international prize court holds that it was an illegal proceeding for the ship to have gone to this particular commercial port of a foreign country and thereupon the national court is bound by the decision as it must be of the international prize court, and is bound to give salvage against a British merchant in respect of the saving of that ship. If I have made myself intelligible, honourable members will agree with me that here is another invasion of the rights of private citizens. These are two illustrations; I could give many others, but I will only give one other, which probably is the most forcible of all.

This international prize court is not merely a court to interpret judicial decisions made, or to administer the provisions of the treaty of London, it is something more; it is a legislative body; because one of the provisions of the treaty is that if there is no provision in the treaty which provides for a case brought before it, the court has to deal with the question according to general principles of justice and equity. What does that mean? It means nothing less than this, that the court is to be able to legislate itself. It is to be able to lay down general rules which it may record in accordance with the principles of justice and equity, and which the Admiralty Court of this country will be bound to enforce. Nay, more than that; it may vary and give decisions, not only contrary to the national law of this country, but the international of every other civilised country. It is hypothetically true to say that it is within the power of the court to give decisions absolutely in conflict with the law of nations and with all our preconceived notions and rules with regard to international law in relation to prizes. If a court so does, it legislates, and it may inflict grievous wrong upon British subjects. This court has no restraint put upon it except its own sense of right and wrong. The result is that the high courts of justice in this country may be compelled to execute the orders and judgments of the international court which are in conflict with every principle of our law. I have endeavoured to put in intelligible form the proposition which I started with in the first instance, namely, that you are, contrary to sound, beneficent constitutional principle, interfering with the pri-

vate rights of citizens and allowing these rights to be interfered with without seeking parliamentary sanction.

Lord Herschell, in the judgment to which I have already referred, said that any such proposition that the rights of private citizens could be interfered with, without parliamentary sanction, except in the possible exception of a treaty of peace, was wholly illegal. I think my right honourable friend the Foreign Secretary might very well consider the desirability of finding some words which would meet the grave difficulty which I anticipate with regard to the possible results that may follow from the enforcement of this clause. I do not conceal the fact that I regard the treaty of London with the greatest hostility, but even if I regarded it with feelings of commendation, if I thought the general purpose and results of the treaty would be to the advantage of this country, I could not, as a constitutional lawyer, support the invasion of elementary principles of constitutional government in this country by this Government which may lead to the most extravagant and extraordinary results. I have not attempted to burden my arguments with efforts at exaggeration nor with any imaginary difficulties. I have dealt with two cases which must arise, and with one case which may arise, and I submit, unless we get an assurance from the Government that some mitigation of the obligations of this novel and extravagant doctrine is assented to by the Government it will be our duty to resist on constitutional ground and constitutional ground alone, the passing of clause 28.

Mr. JAMES MASON. I beg leave to second this amendment. The honourable and learned member opposite has used sound arguments from the legal point of view why this clause should be rejected. It has been pointed out very clearly that it would be specially objectionable when the decrees of the international prize courts clash with the hitherto accepted view of our own prize courts as laid down by the prize law. The objection seems to me to be that the liability to which we are throwing ourselves open by this clause is, to a certain extent, an unknown one. We undertake to enforce the decrees of the international prize court even when those decrees are held, and have been held by us for generations, to be contrary to what we believe to be legal and right. There are many matters in which we in this country differ from other nations in respect to international law. There are matters in which we have maintained for centuries that a certain act is illegal, while some of the other signatories to this agreement maintain that those acts are legal. There is the question of the conversion of merchantmen upon which we have arrived at no sort of agreement. It is clear that even within the law as laid down by the Declaration of London we may be called upon to enforce decrees which we in this country have always maintained were illegitimate, and necessitated

doing something which we believe to be illegal and wrong. Besides that we have also the fact that we may be called upon to enforce decrees on some matter about which we at present know nothing. The fact that the international prize court has to administer the law which is not declared and not laid down in the Declaration of London lays us open to a liability which we at the present moment must regard as unreasonable.

It is obvious that the international prize court may gradually make law for itself which is wholly incompatible with all the views we have contended for, and which we have always maintained were proper laws to guide international arrangements. There is the difficulty of matters extraneous to the Declaration of London, and I have an amendment later which proposes to exclude from the jurisdiction of the international prize court matters which are not definitely dealt with in the Declaration of London. This clause is also objectionable because there is no provision by which we seek to enforce that other nations shall reciprocate and accept the same burdens which we accept under this agreement. We propose here to enforce the decrees of the international prize court quite irrespective of whether the other signatories to the convention will also undertake to enforce those same decrees. On the committee stage I moved an amendment which endeavoured to overcome this difficulty, and it sought to suggest that the clause should be made subject to all the other signatories to the convention undertaking to carry through legislation by which they would undertake the same responsibilities which we were undertaking. The answer of the Solicitor-General to that was that it would be quite possible for some small power, by delay or other means, to prevent us carrying out the obligations which we now undertook; but it seems to me if an amendment of that kind is unacceptable I do think that it is most necessary that some amendment should be accepted which would, at any rate, give effect to this undertaking of ours only as regards other nations who have undertaken a like responsibility towards ourselves. Otherwise it is quite obvious we may undertake to enforce the decrees of the international prize court only for the benefit of some of the inhabitants of some country, which country is at the same time refusing to enforce the decrees of that same international prize court for the benefit of British citizens. For these reasons I think this clause has a great many objections, and it is justifiable to move its omission.

The SOLICITOR-GENERAL (Sir John Simon). I am sure everyone will realize that my honourable and learned friend (Mr. Atherley-Jones) has spoken with great moderation and great learning, and I wish to assure him that the inability of the Government to accept his proposal does not proceed from any want of recognition of the tone and the temper in which he puts his arguments before the

House. I must point out to my honourable and learned friend and the honourable gentleman who seconded this proposal that what they are really doing is asking this House, which has now reached the twenty-eighth clause of this bill on report, to proceed upon the basis that it has not for the time being accepted as a principle an international prize court. Really, the whole thread and chain of reasons involved in the argument used by the honourable member would be entirely relevant to the second reading discussion raising the point as to whether we were to have an international prize court or not, but if we are to have an international prize court, surely one consequence of that must be some machinery by which its decrees are not to be made waste paper in the different countries which they concern. The House will be good enough to observe that we have already entered upon Part III of the bill, which consists of a bundle of some seven clauses. We have dealt with five of them, and we have two more to deal with. There are seven of them altogether, and the whole of Part III is concerned with the international prize court. We have already had a discussion as to whether or not there should be an international prize court. I know that my honourable and learned friend the member for Durham takes the view which he has always maintained with great ability and straightforwardness that there should not be an international prize court, and, so far, he is perfectly entitled to his view.

The right honourable and learned gentleman opposite (Sir R. Finlay) and others who have taken part in the earlier stages of this debate have criticized the composition of an international prize court. They say, "That is all very well, but what we object to is the composition of this international prize court." That question we have already discussed, and while I am far from saying that the fact that we have discussed it and arrived at a conclusion upon it proves that it is right, it certainly proves that we can not expect on clause 28 to discuss the whole question all over again. Really, the question raised by my honourable and learned friend is comparatively a narrow question, and I think I put the matter fairly when I say, it being granted for the purpose of the present discussion that there ought to be an international prize court, and that it should be composed, as this one is, having already passed the clause which provides for our representatives upon that prize court, and having already enacted a clause dealing with the payment of a contribution towards its expenses and arranging for the transfer of cases to it; having done all that upon that basis, are we really now going to say when the international prize court has given its decision the country involved in the matter is to have no machinery and refuse to produce any machinery by which we are going to carry out that decree. I submit that whatever may be the view of honourable members on this large

and important question which for the present purpose we must treat as having been disposed of, if the answer to this question is the answer which we must take up, we must take it for the present discussion that there is really no answer to the proposition that we must have some such clause as this in the bill. May I ask the House to turn for a moment to article 9 of the convention in which they will see that the parties to this convention undertake as follows:

The contracting powers undertake to submit in good faith to the decisions of the international prize court and to carry them out with the least possible delay.

It is partly because of that undertaking that some such clause as this is proper and desirable, and if we in the British House of Commons refuse to put in our naval prize bill such a provision as this, and at the same time render lip service to the establishment of this international prize court how does anybody suppose the other parties to this Convention are going to regard such a shifty position as that? My honourable and learned friend will appreciate, whether that be so or not, that we have already passed clauses 23 to 27, and unless we are going to discuss the same things over and over again on every clause, I think we are entitled to say that clause 28 should remain in the bill. I will take the special instances which my honourable and learned friend put forward as matters of special hardship, and deserving of special consideration. As I understand him, he says, that in view of the constitutional principle that the Crown by treaty ought not to give away private rights of its own citizens, but ought to come to Parliament before it does so, he objects to this clause. May I point out that this clause has come to Parliament to that extent for that purpose, and it is just because some such parliamentary sanction as this is needed that we are endeavouring to enact clause 28. The ordinary practice of the Foreign Office is that before an agreement is entered into it should be ratified by Parliament.

MR. ATHERLEY-JONES. My contention is that the matters upon which the rights of private citizens are interfered with should *per se* be the subject of discussion in Parliament, and you should not by a general provision put upon a court of law the old obligation of enforcing the matters which have never been subject to parliamentary sanction.

SIR JOHN SIMON. The practice which the Foreign Office has followed, not under one, but under all administrations, is that of refraining from ratifying an agreement until it has received sufficient parliamentary sanction to put it into effect, and, until that is done, ratification does not take place. I hope my honourable and learned friend is able to follow me for the moment, because I am anxious to do justice to one of the principal cases put forward by him by way of illustration. As I understood him he told the House that the

effect of this clause would be that the British subject might find himself as the result of being the loser before the international prize court condemned in costs before that court, and that thereupon it would fall under this clause to the high court of this country or the prize court in any other part of the British Empire to enforce that order for costs. I understand from my honourable and learned friend that I have correctly stated his intentions. This, if I may say so, with great respect to so learned an authority, is the only one more illustration of the complete inability under which those who oppose this convention seem to labour, to understand to what extent its real operation proceeds. Let me point out one instance. If a British subject is going to be a party in the international prize court, is this country going to be neutral or hostile? This country, if it is neutral, has got no prize court established of its own, and, therefore, the British subject is not appealing from this country's prize court at all. The honourable gentleman spoke as though the British subject was going to be deprived of the benefit of international prize law as understood and administered in this country. He cannot be deprived of anything of the kind, for the very single reason that if he appeals from the decision of a national prize court it certainly cannot be from a British prize court, because before there could be a British prize court this country must be at war, and then the British subject is not a neutral. Therefore, if he appeals at all, he does not appeal from a British prize court, but from a foreign prize court, and, if he appeals from a foreign prize court, he chooses to take the advantage, if he thinks it is an advantage, which this Declaration of London and the consequential legislation confer upon him. What is his position today? He is a British subject, the owner, it may be, of a British ship. He complains that ship has been sunk or captured by the forces of some foreign power which is at war with some third power. To-day the only refuge which he has, if he thinks he has been wrongly treated, is to go, not to an English prize court, but to the prize court which that enemy power has set up. If, indeed, he has the exceptional good fortune of convincing that enemy prize court that the enemy is wrong, and he, the British subject, is right, then he gets his damages and away he goes. If he does not experience that satisfaction, then he is under no obligation to appeal, but, if he appeals, he appeals under the provisions of this convention, article 46 of which provides as follows:

Each party pays its own costs.

The party against whom the court decides bears, in addition, the costs of the trial, and also pays 1 per cent of the value of the subject-matter of the case as a contribution to the general expenses of the international court. The amount of these payments is fixed in the judgment of the court.

If the appeal is brought by an individual—

That is the case of my honourable and learned friend—

he will furnish the international bureau with security to an amount fixed by the court, for the purpose of guaranteeing the eventual fulfilment of the two obligations mentioned in the preceding paragraph.

The House will observe, therefore, this British subject, in whose interests my honourable and learned friend I know is most candidly and most sincerely concerned, if he appeals is appealing not from a British prize court to some tribunal which is going to overthrow the law which he has hitherto enjoyed in his own domestic tribunal; he is not appealing from a place which administers what my honourable and learned friend calls the municipal prize law in this country; he is appealing from a foreign tribunal. He either appeals or he does not. He does as he likes. If he does appeal, and if he loses and is condemned in costs, his security has to be lodged, there to pay those costs. Is there really any great injustice or unfairness in saying that a British subject who, up to date, has had to be content with the small mercies which a foreign prize court gives him, if he chooses to go from a foreign prize court to the international prize court, should go there with the responsibility of knowing, what every other litigant in the world knows, that, supposing he loses his appeal, and an order for costs is made against him, he ought to pay. How is he going to be made to pay? Is the international prize court going to have their own bailiff? Are they going to institute some new kind of international distress? Not at all. Under article 9 the different parties agree in good faith to see the decrees of the international prize court are observed, and what we propose is what we expect every other power concerned to see to, namely, that so far as their own subjects are concerned, if there be any cases—I find it very difficult to anticipate any such—which are not covered by the security given in article 46, to which I have referred, then they shall see the decrees of the international prize court are carried out.

MR. ATHERLEY-JONES. My honourable and learned friend must not forget the belligerent Government might also appeal in the not at all unusual circumstances of the municipal court having found in favour of the neutral individual.

SIR J. SIMON. I do not forget it at all. I took the instance my honourable and learned friend gave as being the instance of the depravity and recklessness of those who advised the Government in this matter, and I pointed out to him it is not the fact that in the instance he gave the British subject is either being deprived of the protection of whatever is meant by the English municipal prize law, nor is it the fact that for that purpose such a clause as this is needed, since in the nature of things he has given security for costs. So much for the neutral individual who appeals. There is another side.

So far as British neutrals are concerned they can only appeal when this country is neutral, and whether they appeal from a foreign tribunal or not is entirely for them to choose. Take the other side. There are two parties to this litigation, and, though a British merchant may be on one side, a foreign Government may be on the other. That is exactly the injustice which my honourable and learned friend thinks will follow if we endeavour to set up this principle of each country seeing the other party to the litigation pays those costs which the international tribunal when it decides the appeal thinks proper. What is the other party to the litigation? The other party to the litigation is not a belligerent Government. I do not understand my honourable and learned friend to suggest a belligerent Government would appeal?

MR. ATHERLEY-JONES. Yes.

SIR J. SIMON. I am very sorry my honourable and learned friend should say that, because I really thought he had taken some trouble to study his subject. Would he be so good as to turn to the list of those persons who can appeal under article 4? It really is a sad thing, when so much indignation has been exerted over the Declaration of London, that one of its principal opponents, speaking with special authority and great gravity and knowledge, should be under the impression that a belligerent Government could appeal to the international prize court. Article 4 provides that an appeal may be brought by three main kinds of persons: First, by a neutral power. That is not a belligerent Government. Secondly, by a neutral individual. That is not a belligerent Government. Thirdly, by an individual subject or citizen of an enemy power in a very limited number of cases mentioned. That is not a belligerent Government.

MR. ATHERLEY-JONES. I am sure my honourable and learned friend will not do me the injustice of misunderstanding me. The belligerent power would really, as was pointed out in the discussion at the conference, be the effective appellant.

SIR J. SIMON. I am the last person to desire to do injustice to my honourable and learned friend, but for one who has such an admirable command of English his answer, which I did not invite him to make, was unfortunate. We are agreed then that those who have spent five minutes in really considering this subject, instead of reading pamphlets about it, know that a belligerent Government can not appeal. Therefore, if a belligerent Government comes before the international prize court it comes before that court, not as an appellant, but as a respondent; that is to say, it has won in its own court. The only other case we have to deal with is the case where in the national prize court the belligerent has won and the neutral individual who complains of the capture has lost. In that case it is the neutral individual or the neutral Government that appeals. Suppose the appeal is allowed and

a decision is given different from the decision of the court below, the belligerent Government succeeds. If the belligerent Government succeeds I should not have thought it very likely there would be any order for costs made against them. If, on the other hand, the belligerent Government does not succeed, but fails, is there really anything very improper in saying, "You, the belligerent Government, being one of the parties to this treaty, and having agreed that the decision in your favor may be taken on appeal to an international prize court, must see to it that the decree of that international prize court is carried out? If you have got the ship give it up. If you have not, see compensation is paid in accordance with the order." Is there anything very wrong in that?

I have taken every case. so far as I can follow it, which arises under this treaty. My honourable and learned friend will agree with me that on examination his chief instance—the instance of the British subject being done out of his rights in the shape of municipal prize law—disappears; and, as regards the second case, we understand it was not the belligerent Government that appealed, but the belligerent, who was the respondent, and lost the appeal, and had therefore, quite properly, got to be made to hand over that which he wrongly detained. I trust I have shown to the House that really the case of my honourable and learned friend is not a case which would stand on its merits. It is a case which can very easily be made, and very sincerely believed by those honourable gentlemen who object to the whole thing. Of course, if you do not want an international prize court, and if you are convinced the Declaration of London is a very bad thing, any stick will do to beat the bill; but you could hardly have a weaker stick than the suggestion that, after we have passed clauses 23 to 27, we should stultify the whole proceeding by refusing to pass clause 28.

Mr. Peto.¹ I think the best possible proof that the case of the honourable and learned member for North-West Durham (Mr. Atherley-Jones) was clearly put before the House is that persons of humble intellect like myself could understand his objection and why he wanted the clause omitted from the bill. My objection to this clause is based upon the position of the prize courts in what are termed British possessions. I assume in my objection that we are and they are belligerent powers and that it will be in the case of an appeal to the international prize court the appeal of one of the parties who, under article 4, can appeal to that court. I only make that observation in order to show to the House that I am not going to contravene any of the objections to which the Solicitor-General referred. If I may, I will try and make my case clear.

¹ Conservative.

I will refer first to the terms of clause 28:

That every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the international prize court in appeals and cases transferred to the court under this part of this act.

The House is aware that clause 3 provides for the setting up of these prize courts in British possessions. They are to be Vice-Admiralty or colonial courts of admiralty within the meaning of the colonial courts of Admiralty act of 1890. I turned up the act of 1890 so as to be perfectly clear upon what sort of court it is that under this bill we are going to impose the obligation of enforcing a decree of the international prize court in British dominions which have no representative on it whatever. Clause 1 says:

This act may be cited as the colonial courts of Admiralty act, 1890.

Clause 2—the very forefront of the bill—starts off with saying that—

Every court of law in British possessions which is for the time being declared to be a court of Admiralty or which if no such declaration is in force in the possession has therein original unlimited civil jurisdiction shall be a court of Admiralty.

In clause 6 it states what is the appeal can be made against their decisions. Section (1) says:

The appeal from a judgment of any court in a British possession in the exercise of jurisdiction conferred by this act, either where there is as of right no local appeal or after a decision on local appeal, lies to Her Majesty the Queen in Council.

I want to make it perfectly clear what the position of these courts is under the act. I should like the House seriously to consider what is the position in the case of a court which may be the highest court in any of our dominions. I should like the House to consider what will be its position under the naval prize bill. We must remember that in clause 23, as it is drawn, no jurist from dominions, no matter how eminent, can possibly act as the representative of the British Empire on the international prize court. Clauses 25 and 26 provide for the appeals against the judgment of these prize courts to the international court, and clause 28 orders them to enforce the decrees of the international prize court. I will not attempt to deal with the phraseology of the bill. I suppose it is the usual phraseology used. I do not want to refer at any length to the constitution of the international prize court, but I would just remind the House what is the position of those parts of the Empire which are called British possessions. We must remember in considering the enforcement of the decrees of this international prize court another fact. We are saying, for instance, that Canada, although Panama is worthy of having a deputy judge, shall not be represented even by a deputy judge on the

international prize court. Again, Australia may not, while such places as Haiti and San Domingo may, be represented. I think that this House ought to know that it is perfectly clear that in the articles it is laid down that each of the powers will do all they can to get the decrees of the international prize court enforced. I want to know why we, the largest colonial Empire in the world, should be the first to impose what I regard as an ignominious condition on the different parts of our Empire. Are we quite sure that the other signatories of this convention of London are going to follow suit, and that they will impose the same conditions on their colonial courts as we are asked to impose on our colonial courts?

I do not claim to speak with any knowledge of Admiralty affairs, but it will be agreed by all honourable members that we have not only invited, but we have welcomed the cooperation of our dominions in the naval defence of the Empire. We are perfectly aware that Australia, New Zealand, and Canada are doing their best to cooperate with us in the naval defence of the Empire. From nature of the geographical position of the dominions their navies will be at the other end of our great trade routes. Therefore it seems to me the greatest use of these navies will be in helping us to do that which we are doing less well than any other of our naval obligations of looking after our British trade routes, and especially those which terminate in Australia, New Zealand, and Canada. It is obvious that in any naval operation undertaken to assist this country when at war, the navies of the dominions will naturally come in contact with the very questions which will have to be decided in the prize courts in British possessions. I will give one simple illustration. Take the case of a neutral merchantman laden or partly laden with some cargo which a prize court in Canada holds to be contraband, that decision means that it is a lawful prize of war. It is quite possible that the international court may decide in an exactly opposite sense. But here, in this clause, we say in effect that, although it may be the highest court in the dominions, although it may give a decision with which we are entirely in agreement, and which we believe ought to be agreed to by any court so far as international law as it now stands is concerned, we say, although the appeal is to a court on which they have no representative, yet the order of that court is to be enforced within its jurisdiction, whatever the decision of the international prize court may be.

I ask the House to consider, in connection with clause 28, not only the wording of the clause, but its spirit and purpose. Is it likely to promote that sympathy between the dominions of this country, of which Lord Haldane, speaking in another place, said, on the 18th May, "we are going to leave the British Empire to

hold together by bonds of sympathy." Is it likely that this clause will promote sympathy? Will the passing of such a bill as this into an act of Parliament assure the dominions that the Imperial Parliament protects the interests of these great, growing nations? I also ask the House to consider what was the great cause of most of our troubles in the eighteenth century. Undoubtedly, so far as the North American Continent was concerned, it was the principle of taxation without representation. I say that that touches the pocket, it injures the pocket, it injures the sense of justice, but this clause injures the pride and honour of our great dominions and destroys their confidence in the Imperial Parliament. The phraseology of the clause may have been perfectly correct in 1890 so far as the term British possessions is concerned, but I do think that in conjunction with this mandatory clause, which says that they must enforce the orders of an alien court, it is an anachronism redolent of the stupid antagonism and air of superiority which caused so much disaster 150 years ago. Practically I consider that this clause is an insult to our dominions particularly, apart from any question of law, and I hope it will not be allowed to stain our statute book.

SIR A. CRIPPS. I entirely agree with what has fallen from the honourable member who has just spoken as regards the operation of this clause in its wider sense. I regard our dominions as all important, and I only rise to reply to what has been said by the Solicitor-General. I do not disagree with what he said, but as a lawyer I want to be careful of the view I put forward. Clause 58 should be criticised. The honourable and learned member for North-West Durham (Mr. Atherley-Jones) said, "you can not alter the rights of individuals in this country merely by treaty." The Solicitor-General said he realized that this bill has to get statutory sanction or otherwise it could not be done merely under treaty rights. I think the Solicitor-General overlooked the real point of the argument, although perhaps in words he is right, in truth and in substance he is wrong. I think the honourable member for North-West Durham was perfectly justified in saying it is really entirely out of court, and contrary to constitutional practice, to give general powers of this kind, which depend ultimately on what is done by the court. If the Solicitor-General will look at article 7 he will see that there is nothing to interfere with the rights of this country in the international prize court. The expression "international law" in article 7, I assume means the Declaration of London. If we want to go outside international law, as generally understood, is it to be a court to do anything it likes? It merely says what the court thinks to be right and equitable in any particular case. Although I am not going into the constitution of this court, if we take a court con-

stituted like this court will be, having more like the functions of partisan representatives, it is impossible to say that you ought to impose upon the subjects of this country, against their existing rights, what a court of that kind, of its own free will, considers to be just and equitable. I understood that to be the gravamen of the charge made by the honourable and learned member for North-West Durham (Mr. Atherley-Jones). It is an extremely important point. I do not deny that you must have some method of enforcing the decrees of the international court. I am not going to deny that for one moment, but I think the honourable and learned member's point, and the point I want to make is, that you ought to make that subject to the paramount right which the municipal prize law gives to the subjects of this country, and not only to the subjects of this country, but, as was pointed out by the last speaker, to the subjects of all our dominions wherever situated. It is an entirely novel constitutional principle to put all these rights at the mere will and pleasure of an outside international court, and then to say, as is said in clause 28, that whatever the effect of that may be, the courts here have no discretion whatever, but must enforce those decrees as a ministerial and administrative duty.

I do not think any precedent can be found for any such clause. I have looked some way back, and since the papal jurisdiction was destroyed in this country I can not find any analogy to a power of this kind being given at all. We have always resented any foreign jurisdiction in this country being applied merely in a ministerial and administrative manner. It is unconstitutional, as the honourable and learned member for North-West Durham pointed out, on a very critical point indeed. May I show how it would operate? No one would be more desirous than the Solicitor-General, on a legal matter, to put the question quite clearly to the House, and I am sure he will believe that I desire to do the same, because we want to get at a truthful solution of the matter. I will take the two cases the Solicitor-General took. I assume that we are in the position of neutrals. It is perfectly true, as the Solicitor-General pointed out, that a decision will be given in the court of a belligerent, and that it will give the decision against an English subject. Under the law as it exists, what is our position? That decision could not be enforced in any way in this country. Our real remedy has been, and I was going to say will be, dependent upon diplomatic action, and when diplomatic action has the British fleet behind it, it has very often been a very strong remedy indeed. What is the change going to be? I assume that the neutral does not like the decision given against him in the belligerent court, and that he appeals to the international tribunal.

SIR J. SIMON. I pointed out that there was no obligation on him to appeal unless he chose, and if he appeals he knows from what decision he appeals.

SIR A. CRIPPS. I do not think that is an answer to the proposition I am going to put. I assume that feeling he has been wrongly treated and that he can not rely on diplomatic action, he thinks the best chance is to appeal. I assume that he has the right to appeal, and that he does appeal, whether wisely or not, with the result that the decision is confirmed.

COLONEL GREIG. Is the honourable and learned gentleman treating us as a belligerent or a neutral?

SIR A. CRIPPS. I am assuming that the British subject is a neutral. I assume that he has appealed, and that the decision is given against him. What is the position? I agree with the Solicitor-General that there are not probably many cases in which the question would arise of enforcing the decision in this country, but it may arise and, of course, unless you have decisions of that kind, clause 28 has no application at all. Let us consider, if a case does arise, what is the result? The courts in this country would have to enforce against a subject of this country the principle of legal wrongs, a principle which has never hitherto been acknowledged in this country, the result always having been considered by us as a legal wrong. I ask the Solicitor-General what answer is there to that? It is a fair way to put the proposition. A neutral, and English subject gets condemned in a foreign belligerent court. He appeals to the court of appeal, and the decision is confirmed. What is the result? That, as against him, for the first time in the history of this country our courts will, or may be, called upon to enforce a decree which, according to our own doctrines, is at once unjust and unrighteous. That is an entirely new position, and we ought to be protected against the possibility of a position of that kind. I do not think what I have said can be controverted. I want to be careful in a matter of this kind not to exaggerate the position. It is of extreme importance in a bill of this kind that our treaty rights should be properly respected, but nothing should be done that is inconsistent with the principle of law in this country that our courts should not be called upon to enforce decrees and orders which, according to our view, are at once unjust and inequitable.

SIR J. SIMON. Will the honourable and learned gentleman state, since he assures us that he wishes the international court's should be enforced, how they would be enforced unless they were enforced by the courts of this country?

SIR A. CRIPPS. In a moment I will say what I think the limitations ought to be. When I say that I think they ought to be enforced, the Solicitor-General will recollect this, I did not say *per fas* or *per*

nefas. I do not object to their being enforced if they are in accordance with our views. According to my view and according to the view of the Solicitor-General it is an extremely serious matter and of the very deepest import, either as regards our prize courts or as regards the prize courts in our dominions, to ask them to put in force the principles contrary to anything heretofore held in this country, and which, according to our view, are unjust and unfair. Let me take the other proposition the Solicitor-General dealt with. I do not want to controvert much that he has said, because a great deal of it was perfectly sound and right. I want to take the position where we are belligerents, and where as regards some other neutral the rights between the belligerent and the neutral are determined in the courts of this country and, as so determined, give a certain decision as regards the rights of the neutral. I presume it will be given in the first instance in accordance with the principles we have always advocated and adhered to in our courts. I assume that the neutral appeals against that, and that the appeal is allowed. Then, of course, the law as laid down by the appellate tribunal would have to be enforced in this country. That is absolutely clear. That would be the effect of this clause. There, again, you might have exactly the same result, namely, that the courts of this country, merely as a ministerial or administrative matter, would have to put in force the law which, according to our views, might be at once unjust and unfair. To my mind that is a very serious position, and it is a position which we ought very carefully to consider in dealing with what is a new code and a new procedure as regards international law.

Let me point out to the Solicitor-General how, in my view, a matter of this kind might be reasonably met. If we are to be met reasonably upon a matter of this kind, I think that on this side of the House we should do all we could to bring about a reasonable and proper solution. Is the Solicitor-General or any occupant of the front bench prepared to say this: that supposing a law which is sought to be enforced as an administrative act in this country is inconsistent with the law we have considered to be just and fair, will he say that in these circumstances we are not to be called upon to enforce it? That is where we come to the crux of the matter. I am not going into matters which would be properly matters for second reading or third reading. It appears to me that, given an international court, and given a proper system of enforcing the decrees of that court in this country, yet we ought to protect ourselves, our courts and the courts of our British dominions—to which I attach great importance—from being put in the unenviable and almost impracticable position of being compelled, whether they wish it or not, to put in force against our subjects that which they think to be unfair and unjust. That is how we stand. That is the broad matter

with which I want to deal, and it is with that broad matter that I think the argument of the Solicitor-General did not deal satisfactorily. I am not going into some of the questions which the honourable and learned member for North-West Durham raised as regards municipal law and prize courts. It is sufficient for my purpose to deal with the prize laws. The rules dealing with the municipal laws are altogether different matters from the prize laws. I am taking our law as it is. I am taking a different decision by the international tribunal, it being out of accord with our views as to what is fair and just. Are we, in these circumstances, to be called upon to enforce what we think is an inequitable thing? One of the reasons why I think this is of great importance—without going into the terms of the Declaration of London—is that it is the view of some of us that the effect of the Declaration will act harshly against neutrals. It has been a credit to our administration, although we have our interests as belligerents, that we have interpreted the law as regards neutrals more favourably to neutrals than has been the case in any other country. What will be the result, it having been our policy to do all we can to protect neutral trade? I go to the extent of thinking that as regards foodstuffs, neutral trade ought certainly to be protected absolutely. Heretofore we have gone in the direction of doing all we can to protect neutral trade. What would be the possible effect of a decree of the international court? We should have to go against the whole of our liberal policy in the past in order to enforce what is, in our view, an unrighteous and reactionary law. I do not think there is any precedent for such a proposition. I agree it is one of the difficulties of the case. It is not for me to deal with the difficulties which arise on a bill of this kind, but it is a difficulty and, at any rate speaking for myself, without I can see in anything that is said that the difficulty is removed or satisfactorily explained I shall follow the honourable and learned gentleman (Mr. Atherley-Jones) into the division lobby if he goes to a division upon this, not upon the grounds that there must be some power of enforcing decisions, but on the ground that it ought to be so safeguarded that our views of justice and right should not be superseded and, above all, that you shall not put the obligation upon our courts to do what they think is wrong in principle and unjust to the subjects of this country.

MR. DEPUTY-SPEAKER (Mr. Whitley). Before the debate proceeds further I think I ought to point that honourable members are not entitled, on the motion to leave out the clause, really to review the whole bill. That is a matter for third reading. The discussion seems to be running on the proviso standing in the name of the honourable and learned gentleman (Mr. Atherley-Jones), but practically on a motion to leave out the clause the discussion ought to run on the

effect on the bill of this clause not being in—some reasons to show that the bill would be workable without the clause.

Mr. BUTCHER. Would it be in order to go into these matters upon the clause if the Government announced their intention not to accept any such amendment as is lower down on the paper?

Mr. DEPUTY-SPEAKER. It would be in order to deal with the matters raised in the amendment, but, of course, they can not be discussed a second time.

The FINANCIAL SECRETARY TO THE TREASURY (Mr. McKinnon Wood). It is with great hesitation that I intervene in the debate, which has been conducted by some of the most distinguished lawyers in the House, because I can not pretend to deal with it in any degree from the point of view of a lawyer. But the proposition of the honourable and learned gentleman (Sir A. Cripps) appeals to me in quite a different sense—not in the legal sense, but from the point of view of elementary fairness. The proposition that is put before us by the honourable and learned gentleman is that if we get a decision from the international prize court, which agrees with our views of what is just and right, we are to accept it and enforce that decision; but he actually asked His Majesty's Government to declare that if that decision does not agree with our views of what is right and just, and what my honourable and learned friend (Mr. Atherley-Jones) called—and I was astonished at the phrase—municipal prize law—what he meant was British prize law—

Mr. ATHERLEY-JONES. The prize law as administered in this country is municipal law.

Mr. MCKINNON WOOD. I accept the correction. Possibly my honourable and learned friend is right. What the Government is asked to say is that if the decision of the international court agrees with the view of the British Government as to what is British law, then it is to be enforced; but if it does not agree with that view it is not to be enforced. Surely you can not put that proposition before other nations without admitting that other nations will adopt the same principle; and if we appeal against the decision of a Russian prize court, as in the case of the *Oldhamia*, which is still agitating Lancashire, where British subjects think they were wrongfully deprived of £60,000 worth of property in regard to which at the present moment they have no remedy whatever, and the international court gave a decision which in Russia was not considered to be a proper decision, is Russia not to enforce the decision? The whole proposition renders utterly absurd the whole idea of an international prize court. I think that is the object of it. I do not think my honourable and learned friend would deny that his object is to destroy the principle of an international prize court, of which he disapproves. But let him do it directly, and not by suggesting that the British Govern-

ment should put an utterly preposterous proposition before other nations, the proposition that after we have gone to the court of appeal we should be judges in our own cause. Let me take the case of the honourable and learned gentleman (Sir A. Cripps), that we are the belligerent interested. Does he say that if the court of appeal gives the case against us, we are not to take steps to enforce the decree of the court, and that the British Government is not to give the remedy which the court has decided they ought to give, nor to restore the property of the neutral if he has succeeded in his appeal? If, on the other hand, it is a question of a British neutral appealing to this court, after all when you come to look at it as a business proposition what is the risk he runs? My honourable and learned friend (Mr. Atherley-Jones) made a good deal of that. Take a case which appeals to me as a business man. I am a ship-owner. My ship is taken and burnt like the *Oldhamia*. I appeal. I lose. I can not lose my ship. That has gone. My honourable and learned friend seemed to think I stood to lose a great deal. I can not find anything I am likely to lose. Of course I should have heard the opinion of lawyers on the point. I only throw this out as a plain business man. The only thing I think I can lose is costs. I might be cast in costs. I might have to pay that 1 per cent. Even that statement has to be modified, because the appellant has to give security for costs. Therefore the only thing that the British court will have to recover from me will be the difference between the costs which the court of appeal says I must pay and the costs I paid into court. Is it an unreasonable proposition that if we accept the court of appeal and a neutral foreigner appeals against us, if the court decides against us we should obey the decree of the court? Is it an unreasonable thing if a British subject chooses to appeal—because he need not appeal unless he likes—that he should pay the costs of the action he loses? I should be delighted if I were a litigant if I could do it on the lines of the honourable and learned gentleman (Sir A. Cripps), that if the verdict is in my favor I will accept it, and if it is not I will reject it. But how you can expect any nation in its senses to agree to a court of appeal set up on those principles I fail to understand.

SIR. R. FINLAY. I wish to put before the Government the effect of this clause 28 upon a question which was raised by the Foreign Secretary on the last discussion on this bill as to the law laid down in the international prize court as to the conversion of merchantmen on the high seas into men-of-war. Everyone agrees that is one of the most important points which could possibly be raised for this country and it has been left open as no agreement could be arrived at so far as the Declaration of London is concerned. The answer made by the Foreign Secretary was, as I understood it, that this

country would not, as a belligerent, recognise the law laid down by the international prize court on any appeal by a neutral which turned upon the conversion of a merchant vessel upon the high seas into a man-of-war. Just see how that contention is affected by this clause. I take a case where two foreign powers, I will call them A and B, are at war. Great Britain is a neutral. The British vessel is captured by a merchantman which was converted on the high seas belonging to A. The owner of the neutral vessel, in the prize court of the country whose converted merchantman captured the vessel, finds that his vessel is condemned on the ground that his objection to the validity of the capture, as being by a merchantman converted upon the high seas, is unsound. He afterwards appeals to the international prize court, which adopts the same view as to the validity of the conversion of a merchantman upon the high seas. We bind ourselves by clause 28 to enforce that decision in our dominions. I wish to ask the Foreign Secretary how in reference to that clause we could possibly say that when in our turn we were the belligerents we were not bound by the principles of law established by the international prize court?

The SECRETARY OF STATE FOR FOREIGN AFFAIRS (Sir E. Grey). I will answer that point very shortly. I was dealing the other day with the statement that the decision of the international prize court might bind our action when we were a belligerent in dealing with a belligerent. I contended that it will not bind our action as belligerents in dealing with belligerents, and I adhere to that statement. We are belligerents and we are dealing with belligerents and the belligerents opposed to us choose to convert on the high seas. We retain, and we can not be prevented by any decision of the international prize court dealing solely with questions between belligerents and neutrals from retaining, our liberty of action to deal with a belligerent, when we are a belligerent, as we please, and I can not see how the question arises on this clause, which deals with the high court enforcing the decisions of the international prize court in British dominions, nor how it can have any bearing on our action as belligerents against belligerents. When we are belligerents against belligerents obviously no question on clause 28 would arise here at all.

SIR R. FINLAY. The decision as to the conversion of a merchantman into a man-of-war proceeds on a principle of law. By clause 28 we bind ourselves to enforce that decision in our dominions, and we do enforce it against a British subject the owner of a neutral vessel. How could we, when we come to be belligerents, say that we repudiate the principles of law upon which the decision which we had bound ourselves to enforce, and do enforce, is based, and say that because we are no longer belligerents we throw what is declared

to be international law by the highest tribunal, that set up by this court, to the winds?

Mr. BUTCHER. I still fail entirely to comprehend the attitude of the Foreign Secretary. As the law stands at present if a merchantman is converted into an armed cruiser on the high sea and is capturing our ships —

Mr. DEPUTY-SPEAKER. I really can not allow that matter to come further into the discussion. As a matter of question and answer I permitted it, but it now appears to be becoming the subject of debate. It does not appear to be relevant in any way to the clause.

Mr. BUTCHER. I am quite content to leave the matter to the judgment of the House upon the statement of my right honourable friend as contrasted with the statement of the Foreign Secretary. Now upon the general question, if I may summarise the way in which the matter occurs to me, it is this. Clause 28 compels all prize courts throughout the British dominions to enforce every decision of the international prize court. What is that international prize court? It is a new court, and what I may call an alien court, not known in our jurisprudence. It is a new law which in many respects entirely conflicts with the existing law as declared by our prize courts. The next point I make is that new law must necessarily interfere with the private rights of British subjects as declared by our prize courts. The question is really in a nutshell. Can the Declaration of London, which is merely a treaty proposed to be ratified by act of Parliament, but which has never come before Parliament, and which is never intended to come before Parliament, and I presume will never be sanctioned by Parliament when so ratified, be used to alter the private rights of British subjects? That is the real question. If you pass this clause, you will enable this foreign court to give decisions founded upon an alteration of private rights, and you will compel our courts to give effect in these decisions. I venture to say that this clause ought not to pass until a law dealing with our private rights has been sanctioned by Parliament. Therefore the Government are premature in asking us to pass this clause. I understood the Solicitor-General to say, in answer to my honourable friend—he will correct me if I am wrong—that the effect of the Declaration of London is to alter private rights which British citizens enjoy at present under the decisions of British prize courts.

SIR J. SIMON. I did not say so. I do not see the relevancy of the observation.

Mr. BUTCHER. That is the answer I have often heard a witness make when he does not wish to answer a question. I understood that in his speech the Solicitor-General did not controvert the proposition of my learned friend—namely, that the Declaration of London does alter private rights which British subjects enjoy by virtue of the de-

cisions of our prize courts. Nor has he controverted the proposition under constitutional law which my honourable friend laid down, namely, that you can not by treaty made in time of peace, and not sanctioned by Parliament, alter private rights. By this clause you give effect to decisions of the tribunal which is to administer the law by which private rights are affected and which is to administer the law contained in a treaty which has never been sanctioned by Parliament. If that be so, one conclusion necessarily follows, namely, that this clause must be left out, because it violates constitutional usage and gives effect to a treaty which has not been sanctioned by Parliament. That is really the inherent effect of this clause. If the Declaration of London had been brought before Parliament and sanctioned specifically by Parliament, then the objection to this clause would have gone. The learned Solicitor-General, in effect, asked for the sanction of Parliament, and I hope I do not misrepresent his argument when I say that I understood him to state, "We are in effect asking the sanction of Parliament to an alteration in the law made by the Declaration of London." If I may say so, with profound respect to my honourable and learned friend, I can not imagine a more delusive argument. You do not do anything of the kind by the clause. What you do is to give effect to the decisions, whatever they may be, but you do not say what law they are founded upon.

My honourable friend has stated that if you want to alter these private rights of British subjects, you must come and ask for the sanction of Parliament to the terms of the treaty itself, in order that they may be considered one by one, and that we may know how far existing private rights, as laid down by our courts, are interfered with, and if Parliament is of opinion that existing private rights declared by our courts should be altered, then it is quite fair to ask Parliament to alter them. But if you do not come to Parliament for sanction, if you do not ask specifically for approval of the alteration proposed, then I say it is perfectly idle to come to this House and say, "We ask impliedly for an alteration of the law on which these decrees will be founded, because we are going to enforce the decrees." I say that would be an unconstitutional act. The true proceeding for us here is first to obtain the sanction of Parliament to the alteration of the law, and then ask the courts to enforce the law. I wish to say a word as to the mode of the application of this Declaration of London as it affects Parliament. I venture to say that there is a good deal to be reconsidered as regards the exercise of the prerogative—

MR. DEPUTY-SPEAKER. I really must enter another protest against this line of argument. It appears to me the honourable member is not confining himself to the question now before the House.

Mr. BUTCHER. I would only urge that the Government should consider what I have said, namely, that if they want our courts to enforce these decrees founded upon a new law, it is their constitutional duty to put that new law before Parliament in order that Parliament may say whether they will sanction it or not.

Mr. MARTIN. As to the words "British possessions" in the clause, I think it would have been better if the Government had used the words "British dominions." I can not myself discriminate between British possessions and British dominions, but if there is any difference I have no doubt the Government would be willing to put in the word "dominions." The honourable gentleman complained that great injury would be done to the colonies by this provision. He must have forgotten that at the colonial conference this bill and the Declaration of London were before the delegates representing the different colonies, and that they agreed unanimously to accept this convention made by the Government here, and also the necessary legislation to carry it out. Sir Wilfrid Laurier and his colleagues at that conference offered no criticism of Canada's action in this respect.

If the delegates at that conference had been the new Premier of Canada and some of his ministers, they would have taken precisely the same view in regard to this matter as Sir Wilfrid Laurier did. Whether section 28 does or does not affect Canada and the other colonies in any way in being called upon to carry out the judgments of the international court, they have no interests in a question of this kind separate from the United Kingdom. The United Kingdom has the onus of looking after the foreign affairs of the Empire. It has the onus and expense of defending the whole Empire as regards foreign nations. I know that in Canada—and I think it must be so in the other colonies—the people are anxious not to be troubled in matters of this kind, and are quite prepared to accept loyally and to carry out any arrangement or convention or treaty that may be made by the United Kingdom with regard to a question of this kind. I feel certain that Canada when ordered by the international court will carry out the decisions most loyally. There can be no possible injury whatever in doing so. At present the colonies have an appeal to the Privy Council, and the colonial courts do not feel in any way put about by having their decisions reversed. Several speakers have referred to this international court as an alien court. It will be a court constituted by act of Parliament, and, having been so constituted, it will deal with affairs which affect the Empire. I am sure that every colony will be most glad to carry out its decisions.

Mr. MACMASTER. The divergence of opinion manifested during the debate only demonstrates the impracticability of administering a court of the character referred to here. The honourable gentleman

opposite (Mr. Martin) has given his opinion, as he was perfectly entitled to do, as to how this court would be viewed in the dominions overseas. For my own part, I must say that in a great, prosperous, and comparatively wealthy country like Canada, I think the proposal to establish a court of this character, on which Great Britain will only have one representative in 15, and on which all the great dominions overseas belonging to this country will have no representatives whatever, will be looked upon as somewhat anomalous.

Mr. KING. Is the argument which the honourable gentleman is advancing germane to the amendment now before the House?

Mr. DEPUTY-SPEAKER. I think the honourable gentleman was not in the House earlier in the discussion, when it was stated that we must take the prize court as having been constituted by the previous clauses in the bill. The only question raised by this clause is the power of enforcing certain decisions.

Mr. MACMASTER. I was simply answering the argument advanced from the opposite side of the House. With regard to the orders authorizing the enforcing of decrees of this court, I submit that it is relevant to consider what would be the character of those decrees. What sort of jurisprudence are you to expect will be established in a court of this character, in which 15 jurisdictions will be represented, and in which each jurist probably will follow his own view of the law of his own country? This clause seems to me to be the pith of the whole bill, because without it the bill would be ineffective.

Mr. DEPUTY-SPEAKER. That is exactly the point. The argument is, therefore, one that should be brought forward on the third reading.

Mr. W. PEEL. I only wish to ask a question to see exactly where one does stand in regard to the argument? I understood that the Solicitor-General for the Government told us that you can not by treaty alter private rights. Then we are told that our courts are to enforce the decrees of the international prize court in this country, whether they are or are not consistent with the law of this country. How am I to know what that law is? We are told by the Government that you have got to infer what the law is from the decisions in force in the courts of this country. It seems to me an astounding proposition to try to force on us to say: Here are laws which we have to submit to, which we have never made at all, or had any part in making. It is entirely done under the prerogative. We are not to know what they are. We are only to know them by their effects when they are enforced in the courts of this country. That is a very back-handed way of getting to know what the law is. Where does the distinction come in? We know perfectly well that in the case of these treaties which do affect the rights of individuals, where duties have to be put on or taken off, you have to pass an act of Parliament; and you also have to do so in the case of treaties of extradition. But in this

case nothing of that kind is going to be done. You are left *ex post facto*, to the discovery of what the law is, to a knowledge of which by some hypothetical method you are supposed to have ascended if the case has not before been tried in the courts, and in the last resort you are to have the decisions of this court enforced in the courts of our country. If that is really the doctrine it seems to me extraordinarily unsuited to the democratic conditions of the day, and that some time or other the prerogative will have to be limited by statute more than it is at present.

COLONEL GREIG. If the honourable member who has just spoken had looked at article 7 of the convention, which is appended to the bill, he would see that it states quite clearly what the law is that the court is to enforce, and that it has nothing at all to do with the Declaration of London, which is not mentioned in the act from beginning to end. It says:

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself, or the subject or citizen of which is, a party to the proceedings, the court is governed by the provisions of the said treaty.

In the absence of such provisions, the court shall apply the rules of international law. If no generally recognised rule exists, the court shall give judgment in accordance with the general principles of justice and equity.

One word more on the effect of the omission of this clause which is the sole question before the House. Part III constitutes an international prize court, and section 28 gives power to enforce the orders of this court. Omit that section and you have no power of enforcing, except as specified in section 29, which says:

This part of this act shall apply only to such cases and during such period as may for the time being be directed by order in council, and His Majesty may by the same or any other order in council apply this part of this act subject to such conditions, exceptions, and qualifications as may be deemed expedient.

So even if you left out clause 28 honourable members opposite, if they assent to clause 29, would propose that His Majesty in council should have the power of carrying these out by specific regulations in these conditions. I may point out that clause 29 has met a great many objections raised on the other side, because if the Government of this country, whichever party is in power, desires to reserve any of these questions upon which nothing has been said in the Declaration, or referred to, they can do so by putting into the order in council such qualifications and exceptions and conditions that the order in council shall apply to Part III as they like.

MR. POLLOCK. The observations of the last speaker show how misunderstood this bill has been by honourable members who have not looked into it carefully. The honourable member does not under-

stand apparently that the action of article 7, which deals with a code of law, is the enforcing of an international law, and for that purpose the Declaration of London is gone into, in order to have what this code of international law is. It is for the very reason of the uncertainty of the law to be enforced in this court, that my honourable friend moved his amendment. What we say is do directly what you are really endeavouring to do indirectly. The Financial Secretary to the Treasury (Mr. McKinnon Wood) taunted the honourable member for North-West Durham (Mr. Atherley-Jones) with the suggestion that this was an attempt by a side wind to defeat the purposes of the bill. That is not so. What we really point out is this, that if you want to do what you intend to do, and must do by this clause 28, you ought to have the courage of your opinions, and do it directly, and say you are prepared to alter the private rights of citizens and persons who will be litigants in the international court. That is what in effect you are doing by reason of the reflex action of this section upon the municipal law of this country. That is exactly why we object to this clause. In carrying out the decrees of the international court, those decrees must necessarily have a reflex effect upon the law of our country, and to the extent to which those decrees modify the law of our country to that extent our law, which obtains between citizens, will be modified and altered. We say rather than have that done indirectly by the enforcement of decrees that we do not know, founded on law that we do not know, let us have some statement which will make it plain to citizens that their rights are altered. We are giving authority to this court to have its decrees enforced in our courts. We are bringing in a new system of law; and new changes by the decisions of a new court which must necessarily have a very wide and far-reaching effect. It is because we complain of the operation of clause 28 and say that it is not fully understood by persons who have not studied the bill, and by I dare say a number of persons in our colonies who have not fully appreciated the effect of it, that we say that without some modifications and limitations there ought not to be given any power to enforce the decree of the international court, and that we ought in some way to safeguard our own municipal law.

Question put, "That the words proposed to be left out stand part

The House divided: Ayes, 212; noes, 115.

Mr. BUTCHER. I beg to move, at the end of the clause, to add the words, "Provided that this section shall not take effect until the other powers mentioned in article 15 of the convention set out in

the first schedule to this act have likewise made provision to secure within their several jurisdictions the enforcement of all orders and decrees of the said court in the matter of appeals and transfers from the several prize courts."

The object of this amendment is plain on the face of it. It is to secure that there shall be some reciprocity in enforcing the decrees of this international prize court. In other words, we should have to enforce decrees in favour of a power that never intended and never has taken power to itself to enforce the decrees. I understand the Government may insert some amendment in clause 29 in order to meet this point, and I therefore only formally move the amendment.

Mr. PEEL. I beg to second the amendment.

Mr. McKINNON WOOD. Of course, I entirely sympathize with and understand the object of the honourable and learned member that if this clause 28 is to be applied to Great Britain, some similar provision should be made in the other countries which ratify the Declaration of London. I think we have provided for that, and if the honourable and learned gentleman thinks it advisable, I would suggest that he should add certain words to his amendment, which would be more appropriate to clause 29 than to this clause. If the House looks at section 29 they will see it provides that "this part of the act should apply only to such cases and during such period as may for the time being be directed by order in council." It is provided that power should be given to the executive Government to see that provisions for enforcing the decrees of the international prize court are made in other countries as well as in this country. By article 9 of the convention "the contracting powers undertake to submit in good faith to the decisions of the international prize court, and to carry them out with the least possible delay."

Mr. BUTCHER. They can not be enforced.

Mr. McKINNON WOOD. Any power which ratifies the prize court convention is bound by this article 9. I think we secure all the objects which the honourable and learned gentleman has in view.

Mr. BUTCHER. I would point out that the article referred to in the convention is really of no good at all. What we want is to secure that the other contracting parties shall have a similar clause in their legislation.

Mr. McKINNON WOOD. It is not necessary in all foreign countries to have that provision, because the procedure would be different in other countries. I do not, however, want to go into legal questions; it would depend upon the constitution of the prize court; but if the honourable and learned gentleman is not satisfied with the explanation, I think we might meet his view by adding similar words with a similar object, and the words we suggest are that the parties re-

ferred to should be parties to the convention. If we add those words to clause 29, with some other slight modifications of the honourable gentleman's proposal, the object he has in view, I think, would then be attained. Of course, the difficulty about the whole thing is this: I am afraid that even in the modified form I have suggested there would be a little difficulty as to who is to begin. Somebody must **begin to ratify the Declaration**. The ratifying of the Declaration, of course, does not carry out the decrees of the international prize court, and an order in council would be required. If foreign powers do not provide for carrying out the decrees of the prize court, we should not like the order in council. The question arises, therefore, who is to begin?

Mr. BUTCHER. I am much obliged to the right honourable gentleman for his explanation, and as the matter is to be dealt with on clause 29, I ask leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Mr. ATHERLEY-JONES. I have an amendment on the paper which I do not intend to move, after the decision given by the House on the first amendment. The amendment that I have on the paper is, "Provided that such courts shall not enforce any order or decree of the international prize court so far as such order or decree may be inconsistent with or contrary to the municipal prize law of Great Britain." I do not want to recapitulate the arguments which have been advanced, but I think it is very much to be regretted that you should give this prize court the power, in pursuance of the terms of a treaty, to give judgments that may seriously affect the rights of private citizens. May I ask whether some provision could not be made in another place to meet my object?

Clause 29. (Application of Part III.)

This part of this act shall apply only to such cases and during such period as may for the time being be directed by order in council, and His Majesty may by the same or any other order in council apply this part of this act subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Mr. JAMES MASON. I beg to move, at the end of the clause, to add the words "But in no case shall it apply to matters or questions not definitely specified in the Declaration of London."

The object of the amendment is really to get rid of the uncertainty which attaches to the words "equity and justice." We are told that this international prize court, under certain conditions, which the

Declaration of London does not specify, is to adjudicate according to its own ideas of equity and justice, and I think we should limit the power of the international court to such agreement as exists in the Declaration of London, and that it shall not be extended by the vague use of the words "equity and justice."

SIR J. SIMON. I rise to a point of order. As it appears to me, I submit to you that this amendment is out of order for this reason. The bill begins with a preamble which refers to the convention which is in the schedule. We have already started Part III of the bill. Under clause 23, which provided "In the event of an international prize court being constituted in accordance with the said convention." The honourable gentleman is now proposing to move that this international prize court shall not have the jurisdiction which the convention assigns to it. Article 7 of the convention states:

In the absence of such provisions the court shall apply the rules of international law. If no generally recognized rule exists the court shall give judgment in accordance with the general principles of justice and equity.

The honourable member is now moving in effect that the court shall not have that portion of its jurisdiction. That is the basis on which the whole bill proceeds, and we have already passed clause 23.

SIR R. FINLAY. I respectfully submit that the amendment is in order. A proposal is made to the House to give effect to the convention by the provisions under Part III which we are now discussing. The House may refuse to give effect at all to the provisions of the convention, and surely it is open to us to say we will give effect to the provisions of the convention only partially, namely, where the court has some guide by the Declaration of London.

MR. SPEAKER. I do not think it is open to the House to say we will accept this Declaration in part. We must take the whole of it or none, and as the Declaration contains these words: "The court shall apply the rules of international law. If no generally recognised rule exists the court shall give judgment in accordance with the general principle of justice and equity"—it is to be assumed that in confirming this convention Parliament assents to everything contained in that Declaration.

Amendment made: At the end of the clause insert the words "Provided that no such order in council shall be issued until the other powers mentioned in article 15 of the convention set out in the first schedule to this act, if parties to the convention, have made provision to secure within their several jurisdictions the enforcement of all orders and decrees of the said international prize court in the matter of appeals and transfers from the several prize courts." [*Mr. Butcher.*]

Clause 45. (Saving for Rights of Crown; Effect of Treaties. etc.).

Nothing in this act shall—

(1) give to the officers and crew of any of His Majesty's ships of war any right or claim in or to any ship or goods taken as prize or the proceeds thereof, it being the intent of this act that such officers and crews shall continue to take only such interest (if any) in the proceeds of prizes as may be from time to time granted to them by the Crown; or

(2) affect the operation of any existing treaty or convention with any foreign power; or

(3) take away or abridge the power of the Crown to enter into any treaty or convention with any foreign power containing any stipulation that may seem meet concerning any matter to which this act relates; or

(4) take away, abridge, or control, further or otherwise than as expressly provided by this act, any right, power, or prerogative of His Majesty the King in right of His Crown, or in right of His office of Admiralty, or any right or power of the Admiralty; or

(5) take away, abridge, or control further or otherwise than as expressly provided by this act, the jurisdiction or authority of a prize court to take cognisance of and judicially proceed upon any capture, seizure, prize, or reprisal of any ship or goods, and to hear and determine the same, and, according to the course of Admiralty and the law of nations, to adjudge and condemn any ship or goods, or any other jurisdiction or authority of or exercisable by a prize court.

Amendments made: In sub-section (1), leave out the word "such" ["such officers and crews shall continue to"].

After the word "crews," insert the words "of His Majesty's ships of war, whether themselves concerned in the capture or not."

Leave out the words "continue to."

After the word "them" ["granted to them by the Crown"], insert the words "or any of them." [Dr. Macnamara.]

Dr. MACNAMARA. I beg to move, "That the bill be now read the third time."

Mr. HENRY TERRELL.¹ I beg to move, to leave out the word "now," and at the end of the question to add the words "upon this day three months."

This is a bill of the very first importance, not only on account of the provisions of the bill itself, but also from the fact that on the passing of the bill depends the confirmation of the Declaration of London. It is also particularly important, because there is a very

¹ Conservative.

large body of opinion in the country—the opinion of men thoroughly competent to form an opinion in the matter—that in the framing of this bill the Foreign Secretary has forgotten to give effect to the instructions which he gave to the delegates, instructions with which every man on this side of the House, at any rate, was absolutely agreed. In the instructions of the Foreign Secretary, in his letter of 1st December, 1908, he said:

The delegates should be careful that if, unhappily, the Empire should be involved in war, it will not suffer if those legitimate rights of a belligerent State, which have been proved in the past to be essential to the successful assertion of the British sea power and to the defence of British independence, are preserved undiminished and placed beyond rightful challenge.

As is well known, there is a large number of people, naval men and commercial men, who, after a close study of this bill, are of opinion that if it becomes law the legitimate rights of Great Britain, which have been proved so essential to the successful maintenance of our sea power, will be very seriously prejudiced and diminished. By this bill it is proposed to set up for the first time an international prize court—a court, however, the functions of which will not be limited to the administration of existing laws and existing rules of international law, but which will have very considerable legislative power. When we are asked to establish this court and to endow it with those great powers it is necessary to bear in mind two very important matters. In the first place, there is no more certain method of paralysing the efficiency of a fleet in time of war than by circumscribing its activity by a series of rules and regulations which will limit its effectiveness as against the enemy; and, in the next place, we must bear in mind that the delegates who will constitute this quasi-legislative body will be representatives of nations the interests of every one of which will be opposed in this matter to the interests of Great Britain. Great Britain to-day possesses unchallenged command of the sea. Again I should like to refer to this letter of the Foreign Secretary, where he emphasizes the importance of our maintaining unimpaired and unchallenged command of the sea. Dealing with the question of blockade, he said:

These questions are all closely connected, and the satisfactory solution of them is of extreme importance to a State like Britain whose absolute dependence upon the possession of sea power for security makes it imperative for her to maintain intact the weapon of defence which the possibility of effectually blockading the enemy's coast places in possession of a nation having command of the sea.

He emphasizes the absolute necessity of Britain for her very existence possessing absolute command of the sea, and yet we are proposing by this bill to hand over to the delegates of foreign countries the power to make laws which will trammel our fleet when endeavor-

ing to maintain that unchallenged command of the sea. So long as we hold command of the sea, it is our interest that that sea power should be made and maintained as effective as possible. It is the interest of every other nation to minimize the effectiveness of that sea power. Every other nation is a possible enemy seeking, either alone or in combination with other nations, to wrest from us that command of the sea. Their interest is, therefore, to reduce the effectiveness of our supreme power at sea, whilst our interest, and not only our interest, but an absolute necessity to us, is to maintain unimpaired the supreme effectiveness of our one and only power, namely, the sea-power. Bearing these things in mind, let me ask the House to consider what it is that this bill proposes to do. In the first place, it proposes to establish this court, which shall have the power of overruling the decisions of our highest court of Admiralty, the Privy Council. Not only will they be allowed to overrule that tribunal, but they will also have power—and I place great importance upon this—of making law which shall regulate our fleet in time of war. It seems an extraordinary thing as a business proposition that we who may at any time find ourselves at war with any one of these powers, or a combination of them, should entrust to those powers who are a possible enemy the right of making laws which shall bind our fleet when the crisis comes and we are engaged in war. Before I proceed to show that by this bill we are giving this court legislative powers, I should like, first of all, to call the attention of the House to the constitution of the court. It is said:

Provided this court shall be composed of persons who are to be appointed by these various nations, and who must be jurists of known proficiency—

What ever that may mean—

in questions of international law, and of the highest moral reputation.

When you look at the nations you find that you have, first of all, the great European powers, Japan, and the United States, and then you have also a large number of the small States scattered throughout the world. You have, amongst others, Persia, or whatever part of Persia may hereafter be left by the present Government as an existing nation, which is to appoint one of these gentlemen. This tribunal so appointed will, I submit to the House, inevitably not be a tribunal of independent and impartial judges, but they will be men selected just as the various countries select their judges for their supreme prize courts to-day. Will anybody suggest that the well-known "jurists of known proficiency" selected as the representatives of these various powers will be in any way different from the well-known jurists of international proficiency who are selected by these various States from time to time to constitute their supreme courts

in matters relating to prizes? How do they to-day select the gentlemen who are the judges of their supreme courts? I am not here speaking of the judges of courts of first instance, but of the judges of the supreme courts, and for this purpose I will not take small nations.

Let me take great European nations. How did Russia in the late war with Japan select her judges and her well-known jurists of tried proficiency who presided in her supreme court for prize purposes? We will just refer to what was said on this matter by the Under-Secretary of State for Foreign Affairs on the 28th of June. Speaking of the Russian courts he said this:

The experience of recent wars has impressed upon the British Government the fact that in naval matters international law is in a state of chaos.

Then he says that was the state when the war broke out:

The prize courts of Russia were conducted not according to the British doctrines, but according to the regulations of the Russian Admiralty. If dissatisfied with the decision, the parties could appeal to the prize court in Russia, also administered according to the regulations of the Russian Admiralty.

That is their supreme court. Is there any reason to believe that the judges who are sent to this international court will be other than those who at present preside in the supreme court, and is it to be believed that they will, if they act in the supreme court under the direction of their admiralty, act otherwise when they come to the international court? Is it not perfectly manifest that when these judges assemble in the international court they will act in exactly the same way, not as independent judges simply administering the law, but according to the directions of their respective Governments, and that the directions of their respective Governments, especially where they have to make laws, will be to make the law in such a way as will advantage the smaller maritime, the feeble maritime nations, to the disadvantage of England as the supreme maritime nation? That will be the constitution of this court.

What the Under-Secretary of State for Foreign Affairs said of the Russian Supreme Court is applicable to the judges of the supreme court of every other nation, and particularly of the small nations not European nations. And we are therefore under this bill going to entrust to a body of men composed of representatives of foreign countries, each one of whom will act on the instructions of his admiralty or his Government, the making of the laws which will regulate the activities of our fleet in time of action; and the interest of every one of those is adverse to the interest of England in such a time. It seems to me rank folly for England, which depends upon the efficiency and upon the supreme strength of her fleet for her very existence, to hand over to any body of representatives

of any nation in the world a power to make laws which will hamper that fleet in time of war. I have said more than once that this court is not only a court of law, but is a legislative assembly. I want just to make that good, and to show the House the extraordinary power which by this bill will be given to that court which is here constituted, not only to expound the law, not only to administer the law, but wherever they think the law is deficient to make the law. In the first place, here I must speak for this purpose of the Declaration of London. This House knows that the Declaration of London was accompanied by the report of M. Renault, and we have been told by the Foreign Secretary, and, I think, also by the Under-Secretary of State for Foreign Affairs that the report of M. Renault is to be regarded as an authentic authoritative report binding upon the court. Now this court will, therefore, have to administer the law as laid down in the Declaration of London as supplemented by M. Renault's report.

For the purpose of making good my point, I want to take one concrete case, which will undoubtedly happen as soon as we are engaged in war, and by means of this case I want to show to the House exactly what would be the functions in determining that case of this international court. Everybody knows that in a naval war the navy that possesses an unlimited supply of Welsh steam coal has a greater advantage over one which is wanting in that supply. That was illustrated very plainly in the Russo-Japanese War. For if you read the reports of the Japanese prize courts, you will find that there were several instances there where the Japanese seized neutral ships carrying Welsh steam coal, although they were consigned to a neutral port, and that they seized them by the doctrine of continuous voyage, because they said that steam coal was so essential to a navy that although those vessels were consigned to neutral ports it was perfectly manifest that it was intended to transport them to another port, to Vladivostok, which was the Russian naval base. Therefore the vessels were seized and condemned and the condemnation was supported in two or three cases by the Supreme Court in Japan. I only refer to that for the purpose of showing how essential it is for the navy at all times to be possessed of an unlimited supply of Welsh steam coal. Bearing that in mind, I want the House to consider this concrete case. Supposing that England were at war with a great European nation, take, for instance, just as an illustration, the supposition that we were at war with Germany; suppose in the course of that war a British cruiser was to meet in the English Channel a neutral vessel, say, a Danish vessel, laden with steam coal, bound for one of the Danish islands in close proximity to the naval port of Kiel. Her papers would be made out for a voyage to this:

island. The officer of the cruiser would board her, would examine her papers, and find that she had a cargo of Welsh steam coal bound for this island. He would know perfectly well that although the papers were made out bound for this island, the coal was bound for Kiel, and I may go further for the purpose of my argument, and even admit that supposing he was to ask the officer in command of this neutral vessel, "Where is this coal going to?" the officer might very well say, and if he was a truthful man he would say "It is going to Kiel. I am taking it to this island, and there it will be transhipped into lighters, and taken to Kiel. It is intended for the German Navy." Of course, under the existing law the cruiser would seize that vessel.

Suppose, however, after this bill were passed that the cruiser were to seize that vessel, and the vessel were condemned by our courts, and the case were taken to the international court of appeal. What would be the position of the international court then? I would like the Under-Secretary for Foreign Affairs to give attention to that point. Would that seizure be justified? The papers show that the ship is consigned to the Danish island, close to Kiel, and the cargo, conditional contraband, is steam coal, manifestly intended for the German fleet. Would that be justified? The international court, when this came before them, would, of course, have to turn for an answer to the question to the Declaration of London, and the Danish shipowner would rely on article 35. Coal is conditional contraband under the Declaration.

Conditional contraband is not liable to capture except when found on board a vessel bound for territory belonging to or occupied by the armed forces of the enemy, and when it is not to be discharged in a neutral port.

So far we should be all right. Then the article goes on—

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge, unless she is found clearly out of her course and unable to give an adequate reason therefor.

So the court will have to say upon that, the seizure is wrong. She was, according to her papers, consigned to a Danish port. The vessel and the cargo and the ship's papers are conclusive proof both as to the destination of the ship and of the cargo. Then the English advocate would say, "Yes, that is all very well, but M. Renault's report has equal force with article 35, and M. Renault, in his report, feels the absurdity of such a contention, and so he says:

Search of a vessel may reveal facts which irrefutably prove that her destination, or the place where the goods are to be discharged, is incorrectly entered in the ship's papers. The commander of the cruiser is then free to judge of the circumstances, and capture the vessel or not according to his judgment.

So you have the article saying the ship's papers are to be conclusive proof, and M. Renault saying that something else shall be

irrefutable proof to the contrary. By which is the supreme court to be bound? I would ask the representative of the Government to give an answer to that question. You have these two documents of equal validity and equal force, one of which says that the ship's papers are to be conclusive proof—we all know what conclusive proof means—and the other, which says that something else is to be irrefutable proof to the contrary. Under these circumstances, it is perfectly manifest that the international court will have to say, "We can not decide it under the Declaration of London, because the Declaration of London does not decide one way or another: one part says one thing and another part says the exact contrary." Therefore, they would have to go back to the convention, and they would turn to article 7. Let me read to the House how the matter would appear to this international court under that convention. Article 7 says:

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself, or the subject or citizen of which is, a party to the proceedings, the court is governed by the provisions of the said treaty.

In the case I have put you may take the Declaration of London and M. Renault's report on the treaty; you have the treaty, but it is inconclusive, because it is contradictory, upon the very point. Then article 7 proceeds:

In the absence of such provision, the court shall apply the rules of international law.

That is very important, because immediately we have got to apply the rules of international law we have to inquire what is the rule of international law upon this subject. I can not do better for that purpose than turn to the report of the Secretary of State (Sir Edward Grey). The House will observe that the question here would be whether the doctrine of continuous voyage was to apply or not—whether we were entitled to say, "True, the vessel is consigned to this island in Denmark, but the real destination of the cargo is Kiel." That is the doctrine of continuous voyage. Turning then to the Foreign Secretary's instructions to the delegates, on page 25, he says this:

The principle underlying the doctrine of continuous voyage is not of recent origin, and may be regarded as a recognised part of the law of nations.

The doctrine of continuous voyage, according to the Foreign Secretary, is a recognised part of the law of nations, and, in the first place, it is the law which the international court will have to apply. But the advocates on the other side would immediately say, that is all very well, but you have got M. Renault's report to the contrary. The court, therefore, will have this position, that they could not

apply the doctrine of continuous voyage, and the Declaration of London does not tell them what to do. Then what are they to do? They are driven back to the last part of article 7—

If no generally recognised rule exists, the court shall give judgment in accordance with the general principles of justice and equity.

What does this mean? That is what they are driven to in the case I have put, a vital case for the purposes of the British Navy. This international court, the members of which, as I have pointed out, are under the instructions of their Government, may have interests hostile to ours. Yet they have to determine the case according to their ideas of the general principles of justice and equity. It is perfectly manifest, where British interests are concerned, that they would say at once that the principles of justice and equity prescribed that the doctrine of continuous voyage should be absolutely abrogated, and that, therefore, this capture was unlawful. It is perfectly manifest that you give them the power to make the law, because the moment they say the principles of justice and equity necessitate that the court should adjudicate accordingly, it becomes international law from that time forth. That being so, you have the position that this court, on this most important and vital matter, may make the law which shall regulate our naval operations in future. Just see what that means. It means that we might be at war with a foreign country, and that foreign country may find it essential to have a supply of Welsh steam coal. They are entitled to have the Welsh steam coal taken from Wales to their ports, and we can not help it. That is the necessary effect of the bill as it is at present. They will be entitled to ship their coal in a neutral bottom addressed to a neutral State. Our cruisers would know perfectly well that the vessel and cargo was bound to a foreign and hostile naval port, and we could not stop them, because their papers would be held to be conclusive. I do not say that is a most serious element to consider. That shows that in this bill we are not merely setting up a court for the purpose of administering recognised rules of law, but we are setting up a court which shall have the power under such circumstances as those to make the law, and to bind us for all time by the law so made.

Let me take another illustration of the same matter to emphasise the importance of being very very careful before we pass this bill and endow this international court with those great powers. Take the case, for instance, again, of war between England and a foreign power, and let me take Germany as an illustration. We should probably proceed, as we have always in wars before, to blockade all the ports of our enemy. Under the law as it exists at present you have to give notice and declaration of blockade, and you must maintain an effective blockade, but you may

capture a blockade runner wherever and whenever you can the moment she has run the blockade until she has arrived at her ultimate port of destination, and you may capture that blockade runner by any man-of-war belonging to England. Let me assume a blockade on a port or some ports in the Baltic Sea. Under the Declaration of London you have to specify beforehand the exact limits of your blockade, and you have to maintain that blockade efficient through those limits. If your blockade becomes inefficient within any area within those limits, the whole blockade is at an end, and you have got to start *de novo*, with a new declaration and a new notification, and you have to allow any neutral vessels in the port to come out, and to give reasonable time to them to come out before the blockade is again established. Let me consider a concrete case again. We have a squadron blockading a port in the Baltic. Those who have read naval history and the accounts of blockade running will know that blockade runners always operate either in dirty weather or at night. To-day, unlike the past, you can not have what was known as a close blockade. The range of artillery and ordnance generally prevents that. The blockading squadron must be some distance out, and you have to establish a blockade between points A and B on the coast.

In the night or in the fog a certain vessel tries to break the blockade and get through. Now, under this law, you have to capture those blockade runners by means of one of the blockade squadrons. You may have a fleet outside and they can not capture the blockade runner. You must detach one or two or three of your squadron to capture it, and if you do not the blockade runner is entitled to escape. If you do you may be said to weaken your blockade, and it may be inefficient at a particular part at a particular time and the blockade is at an end. What is your position? Take the case of an admiral in command of a blockade squadron. He may have another squadron cruising a hundred miles away, and he would be in wireless telegraphic communication with them, but he can not make use of that, that is useless. The advantages of wireless telegraphy are denied to him; he can not telegraph to the other squadron: "These vessels have run the blockade, stop them." He may have a squadron coming down to relieve him, but they can not stop them. Nobody can stop the blockade runner, and he can not stop the blockade runner unless he detaches one or more of the vessels forming the blockade squadron and send them out, and so weaken the blockade. The position is very much as would be the position in England if we were to pass a law that a burglar escaping from a house could only be captured by the policeman on that beat and no other, and that if he were to run after the burglar,

then any number of burglars might come out. It is just as absurd as that.

The point then is, what would be the decision of the international court under those circumstances? We have the squadron blockading the port, we have the vessel which has penetrated the blockade, we have the cruiser some little distance off, and we telegraph to that cruiser to stop that blockade runner. What do the international court do when the question arises, "Was that vessel properly stopped?" Under the Declaration they may say one thing or the other; they may say that the cruiser was sufficiently near to form part of the blockading squadron or not, and just as they choose they can make the law, and say that the blockading squadron for this purpose shall be only those vessels which have in the past been part and parcel of the blockading squadron, and do not include any cruisers or other battleships which were standing a little way off to assist the blockading squadron. A far more important question may arise; supposing one or two or three of the blockading squadron were to be dispatched, the court might then say, and, I venture to say—having regard to the composition of the delegates forming that court—would say, that the moment we had sent one or two or three vessels from the blockading squadron after the blockade runner, that from that moment the limits of the blockade were reduced because the blockade must, of necessity, be rendered inefficient by the departure of any number of vessels from the squadron. It would depend upon the view they took of what was just and equitable as to what was the result of this action.

Whatever view they took, and again I wish to emphasise this point, that would be the law for the future. It is no use in saying that that would only mean the law in a particular case, and unless the decisions of this supreme court are to be regarded as laying down the law for the future, then the court is worse than useless, because the court would be able to lay down one principle for one vessel and one nation, and a totally different principle for another vessel and another nation. That is another illustration of the way in which we are entrusting this court with the power of making law which will regulate the activities of our fleet at a critical moment. It is also an illustration of the way in which these laws when made will hamper and reduce almost to ineffectiveness great parts of our fleet in time of war, when we want them to be most efficient. It is manifest that these matters must seriously prejudice the position of Great Britain as the supreme naval power in time of war. I remember the Under-Secretary for Foreign Affairs saying on the second reading that there was nothing in this bill which prejudiced us in time of war. I have put two cases, both showing most conclusively that we should be most seriously prejudiced. Can honourable mem-

bers conceive any greater prejudice to England, who has a monopoly of that most important commodity, Welsh steam coal, than that she should lose that monopoly, and have to allow a foreign nation at war with us to get as much of that coal as she pleased? Is it not a prejudice to our naval effectiveness that the law with regard to blockade is to depend upon and be made by potential enemies of Great Britain?

What, by way of reply is said as to the advantages which we get in return for the sacrifices we make? I have given only two instances, but I could go through the Declaration of London almost clause by clause and show how the spirit running through the whole document is to minimise the effectiveness of our sea power to the lowest possible degree. If the Government can show that, by entrusting this court with these great powers, we in another direction are getting greater or equal advantages, I quite agree that there may be something to be said in favour of the proposal. But what are the advantages we are said to get? It is said that in time of war we shall be able to get our supply of food without fear of its being stopped. It is said that this international court may do away with the principle of continuous voyage. If they do, you will be able to get your food in neutral bottoms to France or to any near port. It will come to that port without the possibility of being stopped, and you will be able to get it to England without difficulty. That was an argument used by the Under-Secretary for Foreign Affairs. But he was answered in another connection by the First Lord of the Admiralty, who went into a long argument to show that in time of war the whole food supply of England must come in British bottoms. The law of absolute contraband has no application to British bottoms at all; it applies only to neutral bottoms.

Mr. McKINNON WOOD. A great part of my argument was that in time of war, as in time of peace, the bulk of our food supply must come in British bottoms. There is no contradiction between the statement of the First Lord of the Admiralty and what I said.

Mr. H. TERRELL. I never said there was a contradiction; I said that the right honourable gentleman in one part of his speech referred to this. The First Lord of the Admiralty said:

It is common ground that in time of peace 90 per cent of the foodstuffs which reach this country come in British ships. Only 10 per cent is carried in foreign ships, which might be neutrals in time of war if the same proportions were maintained in time of war as in time of peace. Thus in any circumstances the Declaration of London could only affect 10 per cent of the foodstuffs coming to this country, as the Declaration deals only with the relations between belligerents and neutrals. But in time of war, as a fact, a larger percentage than 90 per cent would be brought in British ships, and I will explain very briefly why. [Official Report, 29th June, 1911, col. 577.]

He then went into a long argument showing why in time of war neutral ships would not bring foodstuffs to England, and he concluded his argument by saying that substantially in time of war all the foodstuffs would come in British bottoms. If that is so, what good is the doctrine of continuous voyage to us? The doctrine has no application to British bottoms; it is only to neutral bottoms; and if none of our foodstuffs will come in neutral bottoms, what good is the doctrine of continuous voyage to us in time of war?

MR. DEPUTY-SPEAKER. The honourable member a few minutes ago laid down for himself a very good rule with regard to the third reading of a bill. I must remind him that he is not entitled to discuss details at length.

MR. H. TERRELL. I apologise. I have endeavoured to show, and I think I have established, that we should be very considerably prejudiced by the powers we are giving to the international court by this bill. I was dealing with the reply made to that, namely, that there are compensating advantages, and I was endeavouring to show that there was no substance in that claim. I am sorry to have to detain the House so long, but this is a matter of vital importance. It is not like the insurance bill, in regard to which if we make mistakes—and we are told we have made many mistakes in it—we can next year or the year after, when we find out the mistakes, rectify them by legislation in this House. If we make a mistake in passing this bill to-night, that mistake will not appear and not be known until such a time as we are engaged in a great war. At that time, it may be when our resources are strained to the utmost, and we are struggling for our very existence; when our fate may possibly hang in the balance, it will be too late to rectify any mistake that we may make now. That mistake may and possibly would then just turn the balance against us. If honourable members would only regard this bill from a national point of view, and disabuse their minds at any rate to-night of the notion that this is a question of considerations of party or party interests; consider that it is one vital to our very existence, and think only of how fatal a mistake may be, I am certain that honourable members who may have considered this matter very lightly and as one which may be rectified in the future, will realise that it is a vital matter. To-night we must decide and decide for the last time, for we may never have an opportunity of rectifying any mistake we may make.

MR. PEEL. I beg to second the amendment. After the very long and exhaustive speech of my honourable friend, I think I can very rapidly sum up in seconding my objection to this measure that we have before us. Of course, the House will understand that the convention we are asked to support to-night is only one out of 14 conventions that were carried out by The Hague Conference in 1907. The

activity of this Government has been very great in many ways, but I doubt if the country is sufficiently aware of its great conventional activity. I am pretty certain if the country was to study in detail and thoroughly these 14 Hague conventions there would be a good deal more trouble in store for the Government than perhaps is in store for them now. I am not at all one of those who take the cynical view that some persons take in this matter, that after all it does not very much matter what convention you have got, what rules of international law, because your sailors can entirely dispense with these matters in time of war. That is a profound mistake, a profound error. Every one must realise that in the terms of that convention and of this London agreement instructions must be given to our naval officers. Those naval officers and the Admiralty will be bound by those conditions in times of war.

The other general objection that I can dismiss in a word is this: that by assenting to this convention, and thereby incidentally accepting the terms of the Declaration of London, we are largely limiting our right to diplomatic protest in time of war. I may refer to the very strong speech made by the late leader of the opposition when, on the second reading, he pointed out that this right of protest was not a light matter at all: it was a very great power that we possessed; for no country when at war with another could very lightly disregard the protests of a neutral power. That power will be largely taken away. I am not sure that the Foreign Office are very sorry about that. There is that case of the *Oldhamia*. The right honourable gentleman the Secretary to the Treasury has referred to it. Wherever we have the question of naval prize brought forward, we have this case of the *Oldhamia*, and the £60,000 that it cost the people of Manchester, as if the whole naval world, and naval considerations generally, turned upon the repayment of £60,000. I object to the court, and I object to the law that it is going to administer. I am not going to go into that, or only incidentally, this evening.

But I should like to deal very shortly with the conditions of the court itself. If you are to have an international court of this kind, dealing with matters of such moment, with matters which affect the interests of the nations, and must be keenly scanned when nations are at war, and passions are aroused, you must at least have a court which commands supreme confidence. What are the conditions that should attach to a court of this kind? First of all, it ought to be a small court. Secondly, I think it ought to be composed of the highest and most able international jurists you can procure in the world. Thirdly, it must be, as far as possible, stable and permanent in its composition. The court that we have got before us now fulfils none of those conditions. I know the Foreign Secretary, in arguing this matter, said, "Oh, yes, but you want an ideal court, and

ideals are not obtained in this world. This is the best court that, under the circumstances, you can possibly get. If you are against this court you are against any international court whatever. You must accept our court, or you will get nothing." I really can not accept this set of Foreign Office syllogisms. I think we are entitled to say that perhaps had there been more vigour, more determination, in these negotiations, and not that acceptance which was shown by our representatives—under orders, of course—we might have secured, say, at least, a court which would fulfil some of these conditions that I have laid down.

First of all, the court is a very large court. It consists of 15 judges. It is far too large to decide on questions of this character. It is based on the representative principle, not on the selective principle. We were told that it was based on the representative principle, not because that was a good principle for the court, but because you could not have a court selected on any other principle. There have been democracies in the world which have chosen their judges by lot. I have not heard that those judges were superior to those selected in the ordinary way. If you are to have representation there should, I should have thought, be some observance of the relative importance and the relative stake those different powers hold in the shipping world. We find that we who have half the shipping of the world have one judge out of 15, although our shipping is in the proportion of one to one. Some of the representation also is of a very extraordinary character. I will not go into it because when I referred to it before I was chastised by the honourable gentleman the Secretary to the Treasury for alluding to some of the smaller States in South America. That I pass them by. However, they are pretty well known. I only raise one question incidentally. I want to know why, on the representative principle, Abyssinia is left out. Abyssinia possesses great warriors. It has never been shown to me that Abyssinia does not contain great jurists. If you accept Haiti, why do you omit Liberia? Haiti, I believe, is largely inhabited by natives of Africa. So is Liberia. Why the people who are translated from Africa to Haiti are better able to sit as jurists than the natives of Africa on their own soil I am utterly unable to understand. So much for the representative authority of the court. Can you secure really jurists of the highest eminence to command confidence if you have 15? I believe that is utterly impossible. The case is really worse in this, that these smaller countries can select jurists not from their own people, but from other nations, so that there will be very great temptation on the part of the larger nations to suggest who should be the jurist to put into this court in order that some of the larger powers may command the more votes. The court is always fluctuating. The larger powers, I agree, are represented by 8 of the

judges: the 7 others are constantly changing. There can therefore be no continuity of judgment or policy in the court, or at least in those members of it who are continually changing. The first 9 are to be a quorum. It might happen; it is not impossible or unreasonable at all to suggest it, that on a division of opinion among the great powers that the casting vote in that court—they sit in secrecy when they come to their decision, so that it will never be known—that the casting vote in that court will be given by one of those powers which did not own a single ship, and had not got a navy at all.

We are asked in a light-handed way to hand over the security of this country in time of war to a court so curiously composed. I will not say anything again about the colour of the court because the right honourable gentleman opposite objects to it. All I say is this, I say nothing about the humbler and darker races. I accept them as my brothers, but I do not want to put them in the position of my judges. The Foreign Secretary says it will be an enormous advantage to us as neutrals in time of war—and that is what he lays stress upon—that we, as neutrals, shall have the right of appeal to the international court, and the Foreign Office will not be put to the trouble of making protests if some of our vessels are seized in time of war. I agree that a great deal of trouble will be saved to the Foreign Office in time of war, but as regards our courts they have always been far more favourable in their decisions than the courts of the other great maritime nations, and our courts have had enormous influence upon the decisions of other courts. But when you get to the Declaration of London you will find that in many ways the rule as to the destruction of vessels and so on is far harder upon neutrals and the rights of neutrals than our courts have been, and you have set the diminution of the rights of neutrals against the advantage which we should get because our ships will have the right of appeal to the international court.

I need not go into the fact that we will have in our courts to enforce the decisions of this court, even though they are administering a law opposed to the municipal law of this country, and even if they are opposed to the ideas of justice and equity which prevail in this country. It is one of the most astounding things about a bargain of this kind that you may have gone into it and made many sacrifices without getting compensating advantages, and anyone who reads the rules will see that we have again and again compromised to meet other powers. I do not see that other powers have compromised to meet us. Here is a bargain in which we have gone a great way to meet other powers, but the most important point in regard to the conversion of merchant vessels into armed vessels on the high seas is not touched at all. The very reason this court was set up was because it was contended it was useful to have

a definite law for the court to administer. That was the reason why the conference was summoned to London, but now we find there is a great area entirely untouched by the Declaration of London left "to the justice and equity" of foreign countries. Is there anybody who looks at the way in which international treaties have been observed in the last 25 years in Europe who would have a high opinion of the justice and equity with which these treaties were observed and carried out? Of course the judges are people from the several countries, and are influenced by the ideas of justice and equity which prevail at the time in their own country. So much for the court.

I shall sum up what I have to say as to the law that is to be administered by saying that it sharpens my dislike to the court set up. I believe under the law so administered we shall, as a great belligerent power, be weakened. Extra burdens must be thrown upon our navy relatively to the navies of other powers, and our navy must be weakened thereby. I am confident that our difficulties in time of war in getting foodstuffs and the necessities of life to this country will be largely enhanced chiefly because of the vagueness in which some of the terms of the treaty are drawn, and because they are drawn on a basis that makes it impossible to conceive any port in this country from which foodstuffs might not be excluded by the captain of any cruiser who could give good and justifiable reasons that he was acting within the four corners of the Declaration of London. A danger of this kind is too tremendous to be faced lightly. In time of war, if the balance was going against us, that balance might be tilted up under the Declaration of London to the destruction and even annihilation of our national life. We are told it would have a bad effect upon the prestige of this country if we rejected the convention to which our representatives at the Foreign Office and otherwise have agreed before it came to us. That is a most astounding doctrine. You would suppose really that the Foreign Secretary was a member of the Holy Alliance and was sitting at the conference at Verona in order to sign away in three or four sentences the liberties of the people.

Everybody understands what parliaments are, and it is absurd to say that the foreign powers do not know that these conferences are to be ratified by the parliaments of the different countries, and that the parliaments of the different countries will have a great deal to say to this convention; they know that the making of treaties at these conferences above their heads has no advantage. Therefore you can not say our prestige will suffer. We must assume that in the chancelleries of Europe there is knowledge of these things, and of what the rights of Parliament are. I do not think we ought to be asked to consider in this way the prestige of the country, and if we are to strike a balance between prestige and safety I would

rather have safety; and if we are to strike a balance between safety and the prestige of the Government or the Foreign Office, again I say I would rather have safety. In this matter we must put aside national prejudice and party prejudice, and in my opinion, if we throw over this convention we will have struck the best blow we have struck for many years for the safety of this country.

Mr. SHIRLEY BENN. I rise to support the amendment moved by my honourable friend. Being party to the establishment of the international prize court, and instructing our courts to enforce the decrees of the international prize court, we acknowledge that we recognise the law of nations, and that we are willing to be bound by decrees accordingly. Unfortunately, by article 7 of the first schedule, we find that the international prize court is only to be governed by the rules or laws of nations when they are generally accepted. There are several rules that are not generally accepted by other countries as they are understood by us. Take, for instance, the question of the base of supply. Foodstuff is not in our acceptance of national law to be considered as contraband unless sent to a foreign hostile Government, or to a Government contractor, or to a port which is fortified, or the base for armed forces. The Foreign Secretary has stated that Liverpool, Glasgow, or Bristol would not be considered such ports, but that is not the way it is understood abroad. The French authorities consider a base any port in which an expedition got out from and to which an expedition would resort in case of need. The German authorities state that the whole area of the country is now a base on account of the railroads; therefore there is no agreement as to what a base is. Some people say that that is a matter of small importance, and that only a small part of our food will come in neutral vessels. The neutral vessel is bound to risk capture by the enemy, and what can a neutral power do? Nothing except pursue the matter in the Admiralty court, and then go to the international prize court and the neutral power may there receive the full value. If an agreement is made one of the rules of international law as to what a base of supply is, then the neutral power could do as America did in the case of a violation of international law—that is, interdict all intercourse with England and France. France had then to rescind her decrees. Great Britain did not do so, and that led to the war of 1811. Neutrals in olden days were weak, but to-day we shall have strong neutrals, who will be able to enforce the rights of neutrals in future wars. I trust this bill will not become law until it is generally recognised what is a base of supply by the countries which are signatories to the convention.

Mr. MACMASTER. The question of a base of supply is the most serious that can present itself in connection with the matter now under consideration. It was stated during the early stage of the debate that

this question had come before the colonial conference, and that the dominions overseas had no complaint whatever that they were not represented upon this court. It was said they had gone very thoroughly into the matter in connection with the Declaration of London and the prize convention, and were perfectly satisfied with it. I think there is a good deal of misapprehension in regard to that matter. I notice in the report of the proceedings of the conference that Sir Wilfred Laurier asked: "Is there any definition of what is a base, or is it left to general interpretation?" and Sir Edward Grey replied: "There is no definition; the word 'base' is the only definition." I am quite satisfied that that statement was not intentionally misleading, and that the right honourable baronet never meant to keep out of view the fact that M. Renault submitted his views to the committee that drew up the articles, and that they were endorsed by that committee. I am quite sure that the right honourable gentleman has left out of consideration the fact that the word "base" was interpreted by the committee and by M. Renault as "a place used as a base of operations or supply." That was the interpretation put upon it by the members of the conference and by the reporter, M. Renault. It was therefore a serious omission to have failed to call the attention of the members of the conference to this definition. The statement has been made in this House that in order to understand the Declaration of London we must take into account both the actual convention and this report made by the committee. The attention of the conference was not called to that. Taking them both together, we find that the word "base" means "a base of operations or of supply." That is an enlargement of the original definition of what a base was understood to mean. At the same sitting the Prime Minister said:

With reference to something Sir Edward Grey said I do not think it has been sufficiently noted that article 34 is merely commentary upon and interpretative of article 33. Article 33 is the governing article, and nothing is liable to capture as conditional contraband unless it is shown to be destined for the use of the armed forces or of a Government department of the enemy.

That is too restricted an interpretation of articles 33 and 34 of the convention. There is no doubt that the general terms of article 33 express what the meaning is and it refers to contraband. When we come to article 34, which is explanatory of article 33, we find an enlargement of 33, and that enlargement is of the most serious character. Article 34 says:

The destination referred to in article 33 is presumed to exist if the goods are consigned to the enemy's authorities, or to a contractor established in the enemy's country, who as a matter of common knowledge supplies articles to this kind of enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy or other place serving as a base for the armed forces of the enemy.

The words quoted, "or other place serving as a base," are additions to the old interpretation of a base of operations. What do these words mean? The words are open for the construction that it refers to some port supplying things not merely required for actual warfare, but for the revictualing of the garrison, and therefore cargoes directed to another place serving the purpose of supplying the garrison. This is an enlargement of our responsibility, and one which this country should not willingly submit to. Why was an enlargement of the old understanding of what constituted a base of operations or a "fortified" place permitted by the introduction of such ominous and far-reaching alternative words as "other place serving as a base for the armed forces of the enemy"? That might mean London, or Bristol or Liverpool.

So much for the word "base." Suppose a conflict arises between this country and some other country, or between some individual in this country and some other litigant, either personal or national, and these words came up for construction in the international prize court; what will be the interpretation put upon them? I have great respect for the opinion of the Lord Chancellor, but it would not be the interpretation of the Lord Chancellor or of any English judge; it would be the interpretation of the international court as a whole, and that court would not be guided by our decisions. They might find these words broad enough to include a commercial port as a "base of supplies," and possibly every commercial port in this country might be open to come within that interpretation.

Probably, although honourable members in this House are supposed to have very wide knowledge, they are not all aware of the difference that prevails in the construction of contracts and the rules of evidence in foreign courts as compared with our own courts, and it is most important that matters to be determined by the international prize court should be on the lines and rules which prevail in this country. Different rules prevail abroad, and we must expect the members of the international prize court will naturally be affected with the ideas prevailing in their own courts. I find in article 42 of this convention the following:

The court takes into consideration in arriving at its decision all the facts, evidence, and verbal statements.

No one in this country ever asks to have verbal statements included, but in foreign countries they are included. Not many years ago a celebrated trial took place in France, where an officer (Dreyfus) was tried for treason. At the trial of that case man after man went into the box and gave verbal statements, of course on oath, practically in the form of speeches. That sort of evidence was received, and the case was adjudged on it. There is no doubt that in foreign countries that method prevails, and it would be extremely

dangerous for us to trust to decisions which might be obtained under such circumstances. There is another point to which I wish to draw the attention of the House. How can you expect any uniformity of idea in a judicial body in which the judges are drawn from so many sources and brought up under so many different systems?

An honourable gentleman said to-day that they were, for instance, quite familiar in Canada and in the colonies with decisions of that kind, that they had become accustomed to them through their appeals to the judicial committee of the Privy Council. He failed to remember that in the first place the judicial committee of the Privy Council is a British court that administers justice in accordance with judicial decisions in this country. He also omitted to take into consideration the fact that the judicial committee of the Privy Council, in deciding the cases that come before them, decides them according to the law of the country from which the appeal comes. They hear counsel from that country explaining what the law is in that country, and they give their decisions under circumstances which are perfectly natural, and which are entirely different from those under which such a decision as we might expect to receive would be given in what would practically be a foreign court, because, with one representative in a court of 9 or 15, what would be the influence of this country as against so many trained in continental ideas? I do not say they would not wish to do us justice. I do not think that for a moment, but in undertaking to submit disputes in which this country, or the individuals of this country, are interested to a tribunal of that character, we are in a far more unsafe condition than by trusting to negotiations with foreign countries and the power of our own great navy. It is not the care of this great nation to obtain decisions on other than absolutely just grounds, but notwithstanding that it is a great advantage to the country to feel there is a power behind us by which we can enforce justice if it can not otherwise be obtained. It will be in the recollection of the House that one of the precepts of Nelson was that—

A powerful fleet was the most efficient negotiator in Europe.

It has been so in the past, and I have no doubt it will be so in the future. I do not wish to detain the House any longer. I thank it for its patient hearing. If we are to obtain this bill on the terms set forth in this convention, I fear we are paying too high a price.

Mr. HUNT. Under this bill the maritime rights of Great Britain will be greatly forfeited, and their maritime powers will also, to a great extent, be destroyed. It will also, and perhaps this is the most serious thing of all, expose our population to a very great risk of starvation in time of war. So far as any ordinary person can

judge, all foodstuffs, except nuts, coming to this country will be liable to be captured or sunk. The only safeguard, according to the Under-Secretary of State for Foreign Affairs, is the opinion of somebody. He did not say of whom. I conclude it will be the opinion of the captain of the enemy's man-of-war. The right honourable gentleman, in answer to a question by the honourable member for Blackpool (Mr. Ashley), in relation to three ports named, Bristol, Liverpool, and Hartlepool, said that whether foodstuffs coming there would be liable to capture or to be sunk was a matter of opinion. It was one which would be decided when the time came, and they could not be expected to answer the question now. I submit you could not have anything more unsatisfactory than that according to the statement of the Government themselves. You have no safety whatever under this bill. The naval prize bill will also authorise the creation of an international prize court, which court will make and administer a new law of nations that will certainly militate against the United Kingdom as a great naval power and in favour of the great military powers of the Continent. Although the United Kingdom owns about one-half of the merchant shipping of the world, we are only to have one judge out of 15 in this international court. I want honourable gentlemen on the other side of the House to consider the composition of this court. There are 46 States which will name judges and deputy-judges. Look at the States! Even the advocates of this bill must see the absolute absurdity of the proposal. There are some like Switzerland and Luxemburg which have no sea frontier and no navy, and know nothing whatever about naval law. Then there is Salvador and Siam. These are countries very unlikely to have any jurists who know anything about naval law. I do not see how they can know anything about maritime law. There are, too, places like Costa Rica, Honduras, Nicaragua, and San Domingo. These are States which have failed to meet their obligations to their creditors, yet each of them is going to have an equal vote of one judge to one judge representing the British Empire.

Look at San Domingo. It consists of 18,000 square miles with a population of under 600,000—less than that of the city of Glasgow. That one little part of an island is going to have the same voting power as the British Empire. This Republic of San Domingo has its customs, temporarily at all events, administered by officials of the United States. The United States helps it to keep the peace and of course it is entirely under its influence. Then there is the black Republic of Haiti, with a very small population, usually in a state of revolution, and that is the sort of State that this Government is going to give an equal vote to that granted to the British Empire, while our great Dominions of Canada, Australia, South Africa, and India are

to have no vote at all. The court is to sit in private; its proceedings are to remain forever secret. I really think it is a most extraordinary thing that the right honourable gentleman the Secretary for Foreign Affairs should have tried to pass a bill of this sort. If he or anybody else had proposed such a bill 100 years ago he would either have been impeached for treason or sent to an asylum for criminal lunatics. This bill will compel the submission to the international prize court of the decisions of British prize courts and of His Majesty the King in Council, although those decisions in the past have always been final and conclusive. That is surely an enormous change. We are really putting ourselves under the power of an alien court in a foreign country.

There is another point to be remembered. The effect of this bill will be to subordinate every act of every British officer to the judgment of this alien court. If this bill is passed it will for the first time bind Great Britain to submit and enforce throughout the British dominions every order and every decree of this international alien court. The opinions of the leading chambers of commerce and of the shipping companies are almost all dead against this bill. So, too, are the leading naval and military opinions. An enemy with a good chance of starving us into surrender would naturally not hesitate for a moment to take the risk of whatever decision the international court might make after the war was over, and after they had won by starving us into surrender. Remember this, no neutral power would be able to remonstrate when its ships bringing food to our people were either sunk or captured, because they would have signed and ratified this Declaration of London, and, necessarily, they would have to wait for the decision of this international prize court. The effect of the Declaration would be to prevent great nations like America from protesting when their ships which carried our food-stuffs were sunk or captured. There is not the least doubt that an enemy would take very good care to demand a sufficiently high indemnity so as to make quite sure that it would cover any sum the international prize court might award against her. I do not quite see what use the decision of that court would be to us after we had been starved into surrender. After all that would have brought about the end of the British Empire and if we got any money afterwards it would do us no real good. This bill has never been submitted to the British and Irish peoples, and I therefore think it ought to be opposed to the very utmost, because it increases the danger of starvation. It increases it enormously in time of war, and it is most distinctly adverse to the great interests of our people and of our country as the greatest naval power. I hope if there are any honourable gentleman left on the other side of the House who put their country and their Empire before their party they will go into

the lobby with the opposition for the preservation of the British people and of the British flag.

SIR R. FINLAY. I have not endeavoured to catch your eye sooner, sir, because I have been waiting to hear what the honourable members opposite thought about this bill. It is quite clear that we are met in a conspiracy of silence, and that the honourable gentlemen are not here to express their views or the views of their constituents in this matter, but to vote. In these circumstances I desire, very briefly, to state the reasons why I hope that this bill will be rejected by the House. My reasons are three. In the first place, I think the court which this bill proposes to establish is a thoroughly bad court. In the second place, I think that on one matter of vital importance to this country, the conversion of merchantmen on the high seas into armed cruisers, this court, such as it is, has no guidance whatever from any code of international law. In the third place, I think that the code, where it exists in the Declaration of London, which is also a matter of enormous importance to Great Britain, is of the most objectionable character. I desire to say a few words in regard to each of these three objections, which I feel very strongly. In the first place, is this a satisfactory court? Is there any honourable member, I care not in what part of the House he sits, who can get up and tell us that he believes that it is a well-constituted court? I do not believe that any honourable gentleman would make that statement. I believe there is but one feeling about it in the country; I believe we should find, if it were possible to ascertain it, that there is but one feeling about it in the recesses of the minds of honourable members in this House. This is a court of 15. Out of the 15, 7 are to be nominated by a number of smaller States. I am not going through their names again; they have been mentioned several times to the House, and the mere recital of their names is enough to show that the balance will rest in this so-called court with the nominees of a number of States who certainly will not command the confidence of the world. The most critical questions will come before this court, questions on which our national prosperity, our national existence, depends. Does anyone suppose, with a court of 15, 8 being members representing the great powers and 7 representing the miscellaneous States that have been so often referred to, that the real business of deciding and settling what votes shall be given will be done in court as the result of a serious consideration of the arguments? How much lobbying will there be? How much will be settled in conference, and even if all the representatives of all the powers were all of the highest integrity, is it not certain that there will be a great atmosphere of suspicion as to what means may have been used to settle their wavering opinion as to the vote they shall give? And that is the court to which you propose to confide the destinies of this

country. In this court of 15 Great Britain is to have one representative. One in 15. Was there ever a more outrageous proposal? Great Britain with maritime interests equal to those of all the rest of the world combined is to have one vote in 15. It is not a court. It is a contrivance for voting Great Britain down. The right honourable gentleman (Mr. McKinnon Wood) stated on a previous occasion that the desire of the Government was to get an assembly which would represent all the nations of the world. That was a very erroneous principle. If you want to have decisions with any authority which will command any respect you do not want to have a sort of Parliament representing all the world. You want to have a small assembly in which you are to have jurists of repute whose opinion will command respect. This unhappy assembly, which is nicknamed a court, will not command respect. Its decisions will be regarded as of infinitely less authority than the decisions of our own Privy Council which it is empowered to reverse.

In the second place, this court is to be at liberty to decide, according to its own pleasure, according to its view of the general principles of justice and equity, without any guidance from any code of law agreed upon between the nations affected, on one matter which is vital to this country. Can there be imagined any point in which we are more interested than the question of the conversion of merchantmen on the high seas into armed cruisers of a hostile power? The most elementary principles of international law require that such conversion shall take place only within the territorial waters of the power which the vessel will represent on the high seas. We endeavoured to arrive at an agreement on this point. We found that our views were hopelessly divergent, and no agreement whatever as to the conditions under which conversion might take place was arrived at, and yet we rush into this convention leaving it to this court, composed without any guidance upon the point, to decide at its pleasure as to whether such conversion is lawful or not. That is an act of madness. Just consider what the effect upon our commerce would be in time of war. Vessels go out as merchantmen from different ports, and when they are on the high seas the captain produces a commission and reads it to the crew, guns are brought up from the hold and mounted, and then you have a cruiser standing in mid-ocean to prey upon our commerce: and that is what you propose to permit by the establishment of this international high court. The motto of the Government has been, "We must have a convention at any cost. Better a bad and ruinous convention than no convention at all." I say better ten thousand times that we had broken off these negotiations as soon as we found the right to convert on the high seas was insisted upon by some European powers. The Foreign Secretary, I know, says that we have always reserved the right not to be bound as

belligerents by any decision which the international high court might arrive at on this point of conversion. The Foreign Secretary is excluding himself. Questions may come before the international high court time after time on appeals brought by neutrals. We have undertaken by the article which we passed when on the report stage to enforce decisions given by the high court in this country on that point. You have a long series of decisions of that kind to which, it may be, we are not parties in any way. In many cases British subjects may be parties, and decisions may have been given on appeals brought by British subjects, and yet the Foreign Secretary says we shall be in no way affected by principles of law laid down in these decisions. I venture to say that the Foreign Secretary is completely mistaken on that point.

I certainly understood from the manner in which the Foreign Secretary expressed himself when this bill was under debate on the 3rd November, that he had had communications with foreign powers, and had intimated to them the position which His Majesty's Government took up on this point. But about a week afterwards—I think it was on the 9th November—a question was put by my honorable and learned friend the member for York (Mr. Butcher) as to what communications had passed with foreign powers on this subject, and the answer was that no communications on the point had passed, and what the Foreign Secretary was relying upon was the terms of the convention itself, and the absence of any declaration that we shall be bound on the question of conversion. The special convention with regard to the conversion of cruisers consists of a series of the most absolute trivialities and of the statement that on the one vital point no agreement had been arrived at. What is the use of supposing and endeavouring to make the country believe—what is the use of persuading oneself that we shall not be affected as belligerents? Of course we shall be affected as belligerents. We have established an international prize court to settle international law, and it is idle to say that if the decisions given by that court legalise the conversion of merchantmen into cruisers on the high seas we shall have our hands free to say that that is an illegal proceeding. In the third place, I say that where we have a code it is of the most unsatisfactory character to be administered by such a tribunal as that.

I shall only touch upon three points, each of them of capital importance. The first is our food supply in time of war, the second is the sinking of neutral prizes, and the third is the provisions as to blockade. With regard to our food supply in time of war that, of course, is dealt with under the head of "conditional contraband," and article 34, which deals with this subject, is one of the most unsatisfactory articles from the point of view of the interests of this country that could possibly be drawn up. It was dictated textually

by Germany, and accepted with hardly any discussion except upon one minor point of drafting at the conference. That article is said to be of little consequence, because we are assured by the Foreign Secretary that the bulk of our food supply in time of war would be brought in British vessels, just as it is in time of peace. The figure given was 90 per cent in British vessels in time of peace and 10 per cent in foreign vessels. I think that there is some exaggeration in the figures; but really I am not concerned to dispute about the precise percentage. We are asked to believe that in time of war that percentage would still hold; that the proportion between British vessels and foreign vessels bringing corn to this country would be the same. I think that everyone knows that the immediate effect of war would be a great increase in the proportion of neutral bottoms bringing food supplies to this country. It really hardly requires argument. It is elementary. The very first principles of business would lead to our vessels being supplanted to a great extent by neutral bottoms bringing corn to this country in time of war. Of what use is it for the Foreign Secretary to tell us that, after all, we need not trouble about the vague defective drafting of article 34 because it would affect only a small percentage of neutral vessels? I say that the percentage will not be small, and that it is of vital importance to this country to give every encouragement to a large increase of supplies of corn in time of war by neutral bottoms.

The second point under this head is with reference to the provisions for the sinking of neutral prizes. That depends on an article which was proposed by Russia and was adopted textually by our Government. That article denotes a relapse into what may fairly be called the methods of barbarism. It is a monstrous thing that a cruiser should, under such conditions as are defined in the Declaration of London, have the right to sink neutral prizes, on the plea, forsooth, that not to sink them would interfere with the success of her operations. Her operations are to destroy our commerce, and no doubt they would be hampered if she were under the necessity of doing what she is bound to do, bringing them into court. In the third place, I say that this court will have to construe provisions of a very vague nature, which tend to hamper the operations of our navy in time of war. The most valuable weapon we have had has been the weapon of blockade. The right honourable gentleman the Foreign Secretary told us in the last debate that the naval experts of the Government approved of this provision with reference to the efficiency of the navy. I would like further information on that point. I should very much like to know the grounds on which the Government were so advised. Why, this Declaration, which this court will have to construe, provides that the operations of the blockading squadron by way of capture are only

to be within what is called the area of operations. Was there ever a vaguer phrase used in any instrument? How narrow it is you will see when the question comes before an international high court, when it is of vital importance to our enemies to have a decision adverse to the interests of this country as a great naval power.

Our doctrine as to the law of blockade has been simple and sensible, that if an effective blockade was established any vessel trying to break that blockade might be captured, wherever she was. Now, the capture is not to be good unless it is "within the area of operations." What is the area of operations? How narrowly will that be circumscribed by our floating balance of seven representatives of minor countries? I believe this convention is disastrous to us as a neutral power, and quite as disastrous to us as a belligerent. And there is one last observation I should desire to make: This bill provides that there shall be an appeal from our own supreme prize court to the international prize court, which this bill proposes to establish. Our supreme court has hitherto been the King in Council. It was felt, I suppose, that it would be indecent to give an appeal from the King in Council to the 15 gentlemen who are to form this international prize court, and so our Government by this convention, and by this bill to carry out the convention, are to convert the King in Council into a supreme prize court, consisting, if you please, of the very members of the Privy Council—of the judicial committee—who would advise the King in Council, when constituted a supreme court of appeal in matters of prize. And that is done merely to give an appeal from our own supreme prize court to the international prize court. What is the case with the United States of America? It was pointed out, when this convention had been proceeded with a long way, when, I think, it was drawn up—though I am glad to say not ratified, and I hope it never will be ratified—it was pointed out by the United States that they did not allow any appeal from an order of their Supreme Court to any other court whatever. Accordingly, this difficulty, which at first seemed very formidable, was dealt with in the form of a protocol, so that they got round it, not by allowing an appeal—an appeal is to be allowed in Great Britain but not in the United States—but by allowing that the United States might bring a fresh action in the international prize court, so that the Supreme Court of the United States will be at liberty to go its own way. On the decision of the international prize court in the independent action it is proposed that the United States, if the case arises, should be liable to pay compensation. I say with great respect to His Majesty's Government that that is a position in which we, as a supreme court, ought not to have been put. A question was put to the Financial Secretary to the Treasury on this point, and I refreshed my memory as to his answer. His

answer was that it was much more advantageous to have an appeal from the supreme prize court than to have the machinery of independent action before the international prize court. I think, after all, that something was due to the dignity of our court, the King in Council, and to the unrivalled reputation which our court has established in matters of prize. And, forsooth, we have undertaken, if this bill ever becomes law, to meekly enforce on British subjects within our dominions the decisions of that international high court. I regard both these conventions, and the bill intended to carry them out in order to establish a high court, as a sacrifice of the interests of this country as the great naval power of the world to the interests of the great military powers of the Continent. I think it is a most calamitous step the Government have taken, and I hope they will have the courage even yet to draw back.

Mr. McKinnon Wood rose.

Honourable members: "Grey."

SIR E. GREY. I appeal to honourable members opposite for a little courtesy. My right honourable friend throughout has given special attention to this question, and I am quite——

SIR H. CRAIK.¹ You are responsible.

SIR E. GREY. My right honourable friend has, I am sure, shown no lack of ability or knowledge on this subject.

SIR H. CRAIK. You are responsible.

SIR E. GREY. My responsibility, of course, I admit, but I think it would be for the advantage of the House and the debate. If it is desired after my honourable friend speaks that I should make clear my own responsibility or supplement what I have said, I am perfectly willing.

Mr. McKINNON WOOD. As the first speaker on this side of the House, I think I might at least have been allowed the courtesy of a hearing. It is only two minutes ago since the right honourable and learned gentleman the member for St. Andrew's University was complaining that no one had spoken from this side of the House. I do not see how that complaint and the action of the gentleman behind him can square with one another. I do not think the opposition can complain that we have not given them their full share of the time this evening. They have got the whole of the time on third reading up to this very moment. There is one reason why it is necessary I should speak, and that reason was the remark of the honourable and learned gentleman the member for Gloucester (Mr. H. Terrell). He quoted me as having uttered words of disrespect with regard to foreign judges, which, when I was Under-Secretary for Foreign Affairs, it would have been exceedingly improper for

¹ Conservative.

me to say, and which, as a member of this House even in an unofficial position, I should be the last to dream of using. I must express my regret that he should have absolutely misrepresented me and then should have made use of such an argument about foreign judges. He made me say something about Russian judges, the correction of which he himself supplied when he read the words I used, which were no reflection upon Russian judges.

Mr. H. TERRELL. The only reflection I made as to his reflection on Russian judges was a quotation from the Official Report of his own speech.

Mr. MCKINNON WOOD. Exactly. How fairly the honourable and learned gentleman interpreted it!

Mr. H. TERRELL. I did not interpret it at all.

Mr. MCKINNON WOOD. The honourable and learned gentleman seems to forget that the Official Report will correct that statement to-morrow morning. He said that I had said the Russian judges would not carry on the work properly. I do not remember his exact phrase, but that was the effect of it. Then he quoted a phrase of mine in which I said that the Russian prize court administers the regulations of the Russian Admiralty—which is a very different statement, and no reflection at all on the Russian judges. All through this debate, even in a mouth where one would not have expected it—that of the right honourable and learned member for St. Andrew's University (Sir R. Finlay)—we have had the same scoffing reflection upon foreign judges. The right honourable and learned gentleman has rebuked me for saying on a previous occasion that behind this opposition there was opposition to an international prize court. It has been proved again to-day. The honourable and learned member for Gloucester introduced a little variety into the debate. At least his arguments were entirely different from those upon which members on his own side have hitherto relied. His argument was that we were handing over to the delegates of foreign countries power to make laws interfering with our command of the sea. His argument was that this court would interfere with the powers of belligerents; that the whole tendency of the Declaration of London was to limit belligerent powers. That is not the argument we have listened to before. It is not the argument of the right honourable and learned member for St. Andrew's University. What are the points of which he complains? His two points are the conversion of merchantmen and the sinking of neutrals.

SIR R. FINLAY. And blockade.

Mr. MCKINNON WOOD. And blockade. Very well. He said that it was the interest of other nations to minimise naval power. That was the argument of the honourable and learned member for Gloucester. How did he support that? By two points. By a statement

about blockade, and by a statement about Welsh coal. I do not propose to follow the honourable and learned gentleman in the particular illustrations which he used, but I would point out that he was not justified in saying that Great Britain would lose her monopoly of the supply of Welsh coal, and that that coal would be exported in time of war to belligerent foreign nations without let or hindrance. That this instrument somehow takes away from Great Britain her command of Welsh coal—I am at a loss to understand what the honourable and learned member could have meant by that. Any power we have to regulate the export of Welsh coal is not interfered with by the Declaration of London. The argument seems to me to fall to the ground. I do not think I need attach much importance to that. Both the honourable and learned member for Gloucester and the right honourable and learned member for St. Andrew's University attached great importance to the question of blockade. I will quote in evidence against them the honourable member for Evesham (Mr. Eyres-Monsell), who, I believe, has had naval experience. He wrote a pamphlet in which he denounced the Declaration of London, but in which he admitted with the greatest frankness that Great Britain had her own way about blockade.

MR. EYRES-MONSELL. Mainly.

MR. MCKINNON WOOD. I will take it at "mainly." How is that consistent with the argument of the honourable and learned member for Gloucester? The Admiralty think they have their own way about blockade. They have widened the power of blockade. The narrowing continental notions have been given up. The doctrine that you had to give a ship individual notice—the French doctrine—has been given up. The area of operations under modern conditions, with modern ironclads, is a very wide area of operations. I can not at all agree with the honourable and learned member for St. Andrew's University upon that point, and the Admiralty do not agree with him. In regard to blockade, we have substantially got our own view established against the continental view. I say again, as I said on the second reading, no one has given a reasonable proof or a sound argument to show that in any respect the belligerent powers of this country are in the least degree weakened by these agreements. Then you have the question of foodstuffs. Here again the honourable and learned gentleman the member for Gloucester, who moved the rejection of the bill, threw away the arguments of the Imperial Maritime League. He agreed with arguments which he attributed to the First Lord of the Admiralty, but which I took the liberty of putting forward on the second reading, that to talk about starvation in time of war as the honourable gentleman the member for Shropshire did, as being dependent upon these agreements, is a perfect absurdity. Admiral Sir Cyprian Bridge,

in a very able paper, has pointed out that in time of war it will be impracticable for us to bring as much of our food in neutral vessels as we do in time of peace. If that is the case, that we can only bring some 90 per cent in time of peace, surely the question of our adequate supply of food in time of war will not depend upon paper agreements. It will depend, as we say it must depend, upon a strong British Navy. The honourable gentleman the member for Taunton thought that this Declaration was far harder on neutrals than the present practice. It is attacked from inconsistent points of views. One moment we are told that it gives up belligerent rights; another that it is hard upon neutrals.

The honourable gentleman the member for Plymouth had a very ingenious argument. He said that this question of "base of supply" was a very vital question. I should agree, if I could at all believe that the interpretation given to it by the opponents of the Declaration had any foundation in fact, that it would be a very serious objection. I think honourable members might give even this Government credit for believing that if they thought that foreign nations interpreted it in the fantastic way in which it is interpreted by the Imperial Maritime League, they would have nothing to do with ratifying a Declaration that involved so serious a limitation of our right to import foodstuffs and other articles of conditional contraband. We do not for a moment believe that other nations take that fantastic view.

SIR R. FINLAY. Have you any assurances to that effect?

MR. MCKINNON WOOD. Yes; we know that that view has been accepted by some of the great powers. What does this interpretation mean? It means that the whole of the clauses in Declaration of London dealing with conditional contraband are a farce and a fraud—nothing less. If every port is a base of supply then all these conditions are ridiculous. What was the authority on which my honourable friend the member for Plymouth supported his contention? It was on the authority of a French jurist named General Jomini. When did that gentleman flourish? One hundred years ago! He was a distinguished French military authority, but what he knew of naval law I do not know. He was a general under Napoleon the Great. But what reason is there to suppose that because that gentleman held a certain view about the military interpretation of a "base of supply," that an article that deals with that question in the twentieth century indicates the same interpretation? That is the most extraordinary argument I ever heard. I do not think that general can be regarded as a great authority on modern naval and national affairs. The honourable member (Mr. Hunt) in the course of his speech, chiefly selected from leaflets issued by the Maritime

League—I detected their flavour—told us San Domingo was to have equal representation with Great Britain.

Mr. HUNT. It sends one of the chosen judges.

Mr. McKINNON WOOD. That explanation would have somewhat mitigated the blunders of his arguments if he had given it at the time. San Domingo never has a judge. San Domingo, once in six years, has a deputy-judge, who only acts if the other judge is absent. I do not know what proportion that makes, but it does not mean equality. The most serious and weighty argument advanced was that of the right honourable gentleman (Sir R. Finlay). He complained there had been a conspiracy of silence, which, by the way, his honourable friends a while ago seemed reluctant to allow to be broken. Why should we not be silent for the most part? We had a two days' discussion on the second reading, and we discussed exactly the same points then as we are discussing to-night. We had committee stage which lasted some two or three days, and we had a day and a half's discussion on report. One of the chief arguments of the right honourable and learned member is that it is a bad court. His idea of a court would be one consisting of four or five distinguished jurists. How are you to get such a court selected? Which of the great countries is going to pass the self-denying ordinance of saying, "We will not select a judge"? Would any two countries agree to do that? You can not deal with this matter as if it had not been discussed carefully by conferences made up of the great powers. These conferences of the great powers felt that they must give representation to the smaller powers, and I pointed out before that some of the smaller powers have produced most admirable jurists of great and world-wide reputation. What were the right honorable and learned gentleman's complaints? They were three. The first was as to blockade. We have got rid of the restricted idea of blockade, and we have got the wider British idea. His two next points were the sinking of neutral prizes and the conversion of merchantmen on the high seas. What is the object of restricting the sinking of neutral prizes? It is to safeguard the rights of neutrals to prevent the sinking of neutral prizes. What is the charge of the right honourable gentleman? It is that we are committing the destinies of this country to a court. We are not giving up a single belligerent right. If prizes are to be sunk it is a bad thing for the neutral that is sunk, but it does not diminish the belligerent rights of anybody, but rather tends to increase them. As to the conversion of merchantmen, I have heard more about this than any other subject. Upon this I will say two things. First of all, why does the right honourable gentleman forget that that is a thing that may happen now without the Declaration of London, and without any prize court convention? Why does he pass over as being of no importance the fact that these great powers have declared that

they maintain that right, and if a war broke out to-morrow those powers would exercise that right? How is that any charge against this agreement? If it is a case of converting merchantmen on the high seas or anywhere else, that is no limitation of our belligerent rights, and we can do it and do it as quickly as all the rest of the world put together. Two things may happen. My right honourable friend has said that as a belligerent we are not bound on a question upon which there has been no agreement. The worst that can happen might be that a neutral might be sunk by a foreign converted merchantman, and the court might decide that she had been improperly sunk. That does not affect our belligerent rights. Supposing the court decides that merchantmen ought not to be converted on the high seas, what follows? Our view has prevailed, and we have got our own way. Supposing the court decides the other way? Nothing can diminish our belligerent rights. If that is international law, we can do it as well as other people, and not an argument has been brought forward to show that we have lost one jot or tittle of our rights as a great naval power.

Mr. WYNDHAM. The right honourable gentleman who has just sat down has made a debating reply to the various points put by my honourable friends. That is the usual practice in this House, and the usual treatment meted out from the Government bench. But the question which we have to decide to-night is one which cannot very conveniently or easily be handled in accordance with the ordinary practice of this House. On the one hand we have to-night, as the Commons of England, to give the sanction of our Parliament to a great international agreement affecting the practice in times of war overseas. That is a huge moral responsibility which rests upon us. Upon the other hand, the question which we have to decide bristles with technicalities with which this House as a whole is totally incompetent to deal, and which I as an individual am not competent to deal with. What are we to do? I think we ought to try—above all if the Foreign Secretary will give us his guidance before we come to a vote—to see if there are not certain broad considerations underlying these technicalities which we can all appreciate, and which can be stated in terms to which, I think, no one will take exception, although they may arrive at opposite conclusions from the same premises. The first consideration is that we have been for a hundred years the greatest maritime power in the world. That is not disputed. The second is that the present Prime Minister claims we are still to occupy that position. He has said our naval supremacy is unchallenged, and must never be challenged—so the moral obligation rests upon us now. The third consideration which I think we ought to take into account is that during the whole of the hundred years during which we have beyond contest been the chief naval

power we have held certain views. We have held, during all that time, when we were in a better position, and therefore in a more responsible position, than any other power, that food should not be contraband of war. We have held during that time that neutrals ought not to be sunk. We have maintained during all that time that privateering in any shape or form, open or covert, ought not to be allowed. That has been a view held by this country for a hundred years, dictated over a hundred years with a great measure of success, and we have been in a position to exercise a great moral influence over all other nations because that was our view and because we were the greatest maritime power.

We go into conference with other powers to urge again those three views. Those who represent us are told to urge that food shall not be contraband. They are told to urge that neutrals shall not be sunk. They are told, if they can, to get a decision that private vessels shall not be turned into ships of war during the process of the campaign. On the first two points we meet with no success, and the third point is not taken into consideration. Those are general considerations which underlie all the technicalities. They can not be disputed. Therefore, what we have to decide is whether, as we still intend both parties being agreed to keep the supremacy of the sea, we can best enforce those views in the future by sticking to the standard we have held up, or by lowering that standard in order to get a wider world-sanction for a lower standard. That is the question before the House. I agree it is a question upon which any two men may hold opposite views, but with the experiences of the past, and with the hope of the future, I trust this House will not take upon itself the grave moral responsibility, whilst it still represents the greatest sea power in the world, of lowering the standard we have held up for 100 years on those three points—that food should not be contraband of war, that neutrals should not be sunk, and that private ships should not be turned into ships of war. I have put as simply as I can the question as it appears to me. I own that two courses may be taken, but I do feel this—that, if we are belligerents, the course we on this side advocate will be to our advantage and also to the advantage of all the neutrals in the world.

The case we have to consider principally is the case in which we are belligerents; not because we are actuated by any selfish motive, but because it so happens that when we are belligerents our interests coincide with those of all the neutrals of the world. Therefore, both in self-defence and because we can hold up the standard of humanity in war, it seems to me this House will be guilty of levity if it rushes in first to sanction an international agreement which no other power is at present prepared to sign.

SIR E. GREY. I willingly respond to the appeal of the right honourable gentleman and to the desire which I understand has been expressed by other honourable members behind him, that I should say something at the close of this debate. But I have very little new to say. The honourable member for Glasgow University did me, I think, an injustice by giving the impression that by not speaking I was in some way disclaiming responsibility. I have nothing new to say. I have already accepted the responsibility. I have been over the whole ground covered in previous debates in this House. But I think perhaps it is desirable I should go as shortly as I can over one or two of the general principles which underlie this question. I will begin by saying that I think honourable members on the other side of the House have vastly exaggerated the importance of the issues at stake. They must surely all feel that we on this side of the House did not take this up as a party question; it was not to make party capital that we went into The Hague Conference. Had we felt as they do about the issues involved we should not have entered into this conference at all. It is overstating the case enormously to say, as the right honourable gentleman the member for St. Andrews (Sir R. Finlay) has said, that we are putting the destinies of this country by this convention into the hands of an international court. What is being put into the hands of the international court is the decision on cases which arise between belligerents and neutrals. Does anybody believe that our destinies depend on such a decision? I would not for one moment submit to an international court any question of our rights in dealing with belligerents, but when it comes to a question between belligerents and neutrals it is a very different matter.

I will explain to the House exactly what I think we stand to lose, and what we stand to gain. In my opinion we stand to gain infinitely more than we can possibly lose. That point I will endeavour to make good. First let me say a word about the composition of the court. Of course, you will never in such a matter as this get anything but a compromise. The right honourable gentleman spoke of five as being a suitable number. You will never get the world at large to agree to so small a number as that. When the right honourable gentleman was arguing for five he even criticised the sort of jurists that might be appointed by some of the great powers. I have no doubt the most perfect court would be one not of five but of three to be appointed entirely by this country. I have only to state that for everybody to see that it is out of the question; so in a lesser degree a court of five, to be drawn from five great powers and possibly from fewer, would also be out of the question for international agreement.

SIR R. FINLAY. Could not several powers agree to one jurist?

SIR E. GREY. Their share in appointing would be so infinitesimally small that they would consider that they were not represented. Reference has been made to some of the countries. What have they got? Not a judge, not a share of a judge, but one-sixth of a deputy-judge! To fine the court down to the small number of five would not give every power a representative, but every great power accepted the proposal that they should have only one representative on this court. The United States willingly accepted only one representative on the court. What they did stand out for was that the great powers should have a majority, and the great powers have got a majority upon the court. It may seem strange to the House that we have only one representative, but what sort of case is going to come before this court? The cases which now come before the prize court of a belligerent. We stand a better chance of justice before this court on which neutrals must have an enormous majority—there can only be two or three belligerents at most, and some 15 countries are represented on the court—we stand an infinitely better chance of getting redress for our neutral merchant vessels which we may consider to have been unfairly treated by a belligerent than we have now in a court of a belligerent, in which not only we have no representatives, but no neutral power has a representative, and in which the composition of the court consists entirely of the subjects of the belligerents who are trying the case. In that case there must be an enormous gain when we are neutrals. But the right honourable and learned gentleman opposite (Sir R. Finlay) may say on this point, and quite fairly, “Yes, but we are not bound by the decision of a belligerent enemy’s court, and we should be bound to enforce the decision of the international prize court.” On that let me observe that theoretically we are not bound by the decision of the enemy belligerent’s court in dealing with our neutral vessels. Theoretically, he will not admit an appeal from his decision.

Theoretically, we are, of course, entitled to go to war whenever we like over the decision of the belligerent court. As a matter of fact in practice we do not. What happened in the case of the Russo-Japanese War? The Russian Government sank one or two British vessels. Let me say that a large number of the cases have come before the Russian belligerent court since. In some cases they were awarded compensation and we heard no more about them. In other cases they were not, and the decisions are not satisfactory. But what redress have we? Take the case of the ships that were sunk. It was when the right honourable gentlemen opposite were in office. The Russian Government sank one or two British merchant ships. If you were going to act you must have acted then. You must have said you were not going to stand this. You knew that your chance of redress in the belligerent’s prize court was small, and you must have inter-

vened by force at the time. They did not intervene by force, and I think that they were quite right not to intervene by force. The temptation or the desire not to go to war will always in these cases overmaster what seems a comparatively small cause that is in dispute between you and another power. But if you do not go to war when blood is hot and the moment the thing is done, you may be quite sure you are not going to war months or years afterwards in cold blood, and after the decision of the prize court of the enemy is known. As a matter of fact you do accept those decisions in practice, and if you have an international prize court, in that way, and in that way only, will you in practice get redress. It is said we shall be bound by the decisions of the international prize court and that they may be unsatisfactory.

Here I will point out what I think we stand to lose and what I think we stand to gain. What we stand to lose is not something that will affect the destinies of this country materially. If we are a belligerent how are we going to be concerned in the international prize court? We capture, we will say, a neutral vessel, because if we capture a belligerent vessel it will not come before the prize court at all. There is no appeal to it from what we may do with regard to an enemy. If we capture a neutral vessel trying to break the blockade or carrying contraband, that case must go before our own prize court in the first instance. That takes some time. The neutral may, if the decision of our own prize court is unsatisfactory, appeal to the international prize court. That further will take some time. Long before it gets to the international prize court the war will be over. It is possible that if we are engaged in a great war, and we take action against neutral commerce, we may, some time after the war is over, have to pay rather more in compensation to neutrals than would have been awarded by our own prize court. That risk, I admit, we run, but the amount of difference in what we may have to pay in compensation to neutral ships, between what the international prize court award and what our own prize court award, must be an infinitesimal drop in the millions which the war would have cost, and it can not affect the destinies of the country or the conduct of the war.

Some honourable member opposite said what would the decision of the international prize court be two or three years hence. What restraining effect would it have on the operations of a belligerent? I admit exceedingly little. To belligerents engaged in spending half a million a day or more on the war the question of a few thousands more or less to pay in compensation to neutrals a year hence would be very little. Certainly it would not affect the destinies of this country. That actually is the risk we run in agreeing to this court of arbitration. What do we stand to gain? We stand to gain, and

we, being the greatest owners of neutral merchant shipping in the world, stand to gain more than any other power. We stand to lose less, because, our share of the neutral shipping being so great and the share of the other powers so small, the amount of interference we shall have to exercise with neutral shipping when we are at war is less than that which any other power is likely to exercise.

When we are not at war our interests in the fair treatment of neutral shipping is greater than that of any other power—as great as that, I should think, as the whole of the rest of the world put together. We stand to gain by the considerable difference that there may be between the decision of the prize courts of a belligerent and the decision of the international prize court. I admit the international prize court might award more in the case of neutrals than a British prize court, but I think it was stated just now that our prize courts are more liberal in their awards with regard to neutrals than are the prize courts of continental countries. If that be so, the difference between what we should get from the prize court of a continental belligerent and that which we might obtain from the international prize court, is presumably greater than anything that we should stand to lose in our own courts. That really, I believe, is a fair statement of the balance of loss and gain that there may be as regards the international prize court. I now come to the point whether the safety of this country is likely to be endangered when we are at war. The honourable member (Mr. Hunt) really drives one to despair on this question. He argued the point again to-night. He puts it to me in questions about once a week all founded on the assumption that there exists to-day some guarantees for the freedom of food supplies coming into this country if we are at war which are going to be destroyed by the Declaration of London. There are no guarantees whatever to-day. The whole thing is chaos.

Mr. HUNT. I did not put it on that assumption at all. I put it to him over and over again whether there was a single port in this country which he could guarantee neutral vessels could come to carrying food supplies without the danger of being captured or sunk. I have got no answer.

SIR E. GREY. The honourable member, I see now is not conscious of his own assumption on which he is proceeding. He asks whether there is any port which we can say is at present guaranteed for the free entry of corn and would be a base of supply. [An honourable member: "With the Declaration of London."] No, now when there is no Declaration of London. It is not ratified now.

Mr. HUNT. There is no misunderstanding. The question is whether there will be a single port which will be safe in time of war.

SIR E. GREY. Yes, sir, but if the honourable member will allow me to develop his argument as well as my own, he will see that I do not

do him any injustice. I told him the other day, in reply to a question, that there would be more guarantees under the Declaration of London than at the present time, because there are none now. If there were guarantees and safeguards now keeping our ports open, by all means compare the guarantees you will get under the Declaration of London with those you have to-day, and see which are the greater. At the present moment there are no guarantees whatever, and even if there are none under the Declaration of London you are no worse off than you are to-day. Somebody on the other side asked, How shall we know what the law will be under the prize court convention? How do you know what the law is now? It is scattered about among the decisions of prize courts in countries all over the world. It is chaos at the present time. There will be some order, some definition, some more accurate knowledge of what the law is to be after this convention. I have heard it argued that the thing would be vague under the Declaration of London or the convention. It is worse than vague now. You know definitely that other countries have claimed the right to declare all food contraband, and have done so in past years. They may do it again.

The other day apprehension was expressed as regards the interference that Turkey might exercise with regard to grain. She might declare it contraband of war under the consideration that she had not ratified the Declaration of London. There came some statement or some understanding that, although the Declaration of London was not ratified, it would be regarded as a standard to be applied, and that, therefore, grain would not be treated as contraband, and would only be liable to seizure if it came by certain routes. I have never contended that we should rely upon that as a guarantee for keeping our ports open. What I have urged, and on that I defend my action in regard to the international prize court convention, is that you have no guarantee at the present time, and that under the Declaration of London there are certain definitions. If food is to be declared absolute contraband, so that all food coming to any commercial port is to be stopped by a belligerent, the belligerent can only do that by driving a coach and four through what is the plain meaning of the Declaration of London. I admit he may do it, but do not say that, having put the Declaration of London there, having given these definitions, and having put him in a position that he has to drive a coach and four through it, it is easier for him than at the present time. If we had been putting forward the Declaration of London as a reason for dispensing with cruisers for protecting our own food supplies, as a reason why we should diminish expenditure on the navy, which may be required to protect corn coming to this country, as a means for reducing the navy estimates, there would be force in the argument of honour-

able members opposite. They might then use the argument that a coach and four had been driven through the Declaration and that it was only a paper safeguard at the best, but we have stated throughout that we do not put it forward as a satisfactory substitute on so grave a subject as our own right to protect food coming to this country.

It is quite obvious to anybody who has studied the figures that we can not be supplied in this country in time of war by neutral ships. We must be able to keep the sea free for British ships in time of war, and if we can keep it free for one flag we can keep it free for all. I come to one other point—whether our rights as belligerents are restricted. I take the case of blockade. That really is the important question, and the important gain which we have made as belligerents under the agreement. The continental doctrine held by many or most continental countries was that the right of blockade was a very narrow and restricted right. You were to make your line in front of a port, and unless a vessel tried to break through that line, a neutral vessel, you were not entitled to interfere with that vessel. Our doctrine was different. It was that we ought not to be, and will not be, bound by a mere line drawn just outside a port. What we claim is the right not merely to a line, but to interfere with any vessel which comes within the area of operations. We wanted the vague, indefinite term. We want to be able, especially in these days when vessels are so swift, in these days of steam, to have it the area of operations, and not a line. We should have gone on to claim that whether there had been a convention or not, but we got the British view accepted. We got area of operations instead of definite line. We should have acted on it whether we got this view accepted or not, but having got it accepted it is a great gain.

Some honourable member just now said, “Depend upon it in modern wars that protests of neutrals are becoming more and more formidable.” I think that there is considerable truth in that. I think that it is increasingly desirable, if we are to exercise our right of blockade according to our own ideas, that we should not be confronted by the protest of a number of combined neutrals. As long as you had no agreement, and as long as other powers held to this doctrine of the narrow line, we ran the risk that if we, in time of war, to bring our enemy down, acted upon the extended idea of an area of operations, we might have had first one neutral and then another entering his protest, and might have got a formidable combination of neutrals against us. We have got them to accept the British doctrine, and by doing that we have diminished, if we are again at war, and very materially sensibly diminished, the chance of neutrals attempting to interfere with the British view

and British practice with regard to the right of blockade. This is a most valuable gain.

One more point as to the conversion of merchantmen on the high seas. Why was there no agreement? Because to-day, convention or no convention, there are nations who claim, and state that they will do it, and claim the right to do it in time of war. That you are confronted with to-day. We have always said that we shall under those circumstances deal with those vessels converted on the high seas as we think fit. Even so, now, by convention, they are not allowed to act as privateers. If they are converted on the high seas they must come under the same rules, and both commander and officers must be from the navy of the other country. They are not privateers in the old sense. But we say they have no right to be converted on the high seas to-day. We retain our rights to deal with them as we think fit, if we are at war. If we are at war no case will come before the international prize court. It is true if we are neutrals and a merchantman converted on the high seas seizes one of our vessels which is a neutral that neutral vessel may bring the case before the international prize court and may fail to get redress and may have to pay costs. But after all, all that the international prize court can possibly have decided upon will have been that it is not positively immoral in their opinion for a merchantman converted on the high seas to interfere with a neutral. I state again we shall not recognize the decision of the international prize court as to what may be done with regard to neutrals as restricting us in our right of doing what we think proper or with dealing not with neutrals but with belligerents.

We have been anxious in this convention to take one step forward in arbitration, and we have selected, or, rather we selected with other powers of course, a certain class of cases which may arise between a belligerent and a neutral, but which can not really affect the destiny of any country. It must be a matter of comparatively small importance, compared with national destiny. We have signed that convention; other powers were not dragged into it reluctantly by us; they were anxious to sign and ratify the convention. All we ask for is not that we shall be compelled to act upon it if we find the conditions unsatisfactory, but that Parliament should pass legislation which would enable us to ratify if we think fit. Of course, without that legislation we can not ratify, and the thing could not be enforced. All we ask for is enabling legislation to enable us to put this in force.

We have preserved a considerable latitude of power under the orders in council if other nations who signed the convention decline to ratify it. If they do not pass the legislation necessary to enable them to put it in force as we do, even then, though the bill may have

become law, our hands will be free, with regard to orders in council, to deal with cases of that kind. The act does not come into operation until the orders are made, and if we find that the other powers are not going to put themselves in a position to ratify the convention, that they are not going to put themselves in a position to comply with its terms and its conditions, the mere fact that Parliament has passed this bill still leaves us perfectly free to deal as we like with orders in council. If other powers hang back, and if they show any disposition not to pass legislation themselves or not to ratify the convention, the House may trust that His Majesty's Government will under those circumstances not take any step to ratify the convention or issue orders in council that would place us at a disadvantage with other powers.

Question put, "That the word 'now' stand part of the question."

The House divided: Ayes, 172; noes, 125.

Main question put, and agreed to.

Bill read the third time, and passed.

HOUSE OF LORDS.

DECEMBER 8, 1911.¹

NAVAL PRIZE BILL.

Read 1^a; to be printed; and to be read 2^a on Tuesday next. (No. 239.)

House adjourned at 1 o'clock, to Monday next, a quarter before 11 o'clock.

DECEMBER 12, 1911.²

NAVAL PRIZE BILL.

[Second reading.]

Order of the day for the second reading read.

The FIRST COMMISSIONER OF WORKS (Earl Beauchamp). My lords, in asking your lordships to give a second reading to this bill it will not be necessary for me to detain you at any great length, because the subject which we shall discuss this evening has already been discussed on no fewer than three occasions in an earlier part of the session. At the same time it is right that I should point out to your lordships that the bill which is before you to-day deals with other subjects than those comprised in the Declaration of London. Of the seven parts of this bill, six, I think I may fairly say, are noncontroversial, and

¹ 10 H. L. Deb., 5 s., 732.

² 10 H. L. Deb., 5 s., 809.

probably the debate this evening will range round Part III, the part which, as I say, your lordships have already discussed on a previous occasion. The remaining parts of the bill deal with the consolidation and the amendment of the naval prize act, 1864, section 4 of the judicature act, 1891, and the prize courts act of 1894. Part III provides for an appeal to an international prize court at The Hague. For a long time there has been felt a need for such a consolidation and amendment of the law, and it is of itself an important matter, noncontroversial though it is. The alteration with regard to the appeal court is comparatively simple. At the present moment the appeal is to the judicial committee of the Privy Council; under this bill the judicial committee is in matters of prize converted into the supreme prize court, for an obvious reason. Technically speaking, the judicial committee of the Privy Council is His Majesty sitting in Council, and it is quite rightly thought very desirable that no appeal should lie from His Majesty but that the appeal should rather be made to lie from a supreme court, which is a matter, perhaps, of technicality, but still of some importance.

The important part round which I suppose most of the discussion will range this evening is Part III, which deals with the international prize court. This involves not only the prize court convention but also the question of the Declaration of London. Let me briefly go over the history of the subject. During the Russo-Japanese War the Foreign Office was inundated with a number of complaints from British traders and British merchants, who complained of various acts which were done in the course of the war, but, still more, they complained of the want of certainty with regard to the state of the law. They said they wished to know what really was the law, what was contraband, what they might carry and what they might not, and as a consequence of this uncertainty I understand that the rates of insurance rose very high indeed. There was very little that the Foreign Office could do. There was no arbitration possible; and if the belligerents in that case or in any other case refuse arbitration, there is really very little that any Foreign Office can do in such circumstances. If the belligerent's court is the final court and there is no possibility of appeal to arbitration or to any other court, it is quite obvious that beyond the somewhat meagre resources of diplomacy there is very little that the Foreign Office can do. That was the position to which the present Secretary of State succeeded when he came into office, and he came to the conclusion that it was eminently desirable that, if possible, some means should be devised by which the decision of a belligerent's court should be subjected to an appeal in cases relating to neutrals; and when the second peace conference at The Hague took place the British dele-

gates, and also the delegates from other nations went there with instructions to see if something could not be done in the matter.

It was quite obvious that there were great difficulties to be met with. It was necessary, in order that a satisfactory solution should be found, that the court should be a permanent court, that it should be a representative court, and also, if possible, that it should be a court which met automatically on the outbreak of war and for which no special procedure was necessary in the way of setting it up specially for that occasion. We think that by the suggestions made in the bill those ends are practically attained. It is a representative court, and Great Britain will have a representative in every case when that court sits, and your lordships will remember, I hope, during this discussion that it deals practically solely and only with the case of neutral ships and goods. It will not affect the operations of Great Britain as a belligerent on enemy ships but only the interests of neutral ships. Your lordships will therefore see that our power at war remains undiminished, and I would venture to recall to your lordships the statement made by my noble friend the leader of the House on the occasion of the previous discussion which took place here, when he stated that in the opinion of the Board of Admiralty the results of this convention upon us as belligerents would be practically small and negligible.

We find in the newspapers a considerable amount of opposition to the naval prize bill and to the Declaration of London so far as it affects it. The noble and gallant lord, Lord Charles Beresford, wrote a letter the other day to the Times, and I understand from the papers this morning that a remonstrance against this bill has been sent to every member of your lordships' House. I have, unfortunately, not seen a copy of it myself, but I believe it is very much on the same lines as the noble and gallant lord's letter. This is what Lord Charles Beresford said in the course of his letter to the Times one day last week:

It is proposed to hand over those maritime rights which we have preserved for centuries to the decision of a foreign court.

The suggestion which is made there, and the conclusion which most of us would derive from that sentence is that, under this bill, we are transferring from British courts to an international court the control of the British mercantile marine, which is some 11 out of a total of 22 million tons throughout the whole of the world. What really and truly are the facts? When ships or rights are brought before British courts they will in no case be British rights. They will not affect the rights of any British owner. Your lordships will see why in a moment. In a British prize court there will be the defendant and the claimant. The defendant, naturally, will be the British Government. Your lordships will see in a moment that the only people who will bring cases against the British Government

will be foreign owners. On the other hand, when there are cases which affect this country before an international prize court, it will be by way of appeal from a foreign prize court, not from a British; those interests can never be brought before a British prize court, and **the two things are therefore mutually exclusive.** British interests will be brought only before an international prize court, because it is impossible that they should be brought before a British prize court.

Now, my lords, let me say something about the rules which, under the convention, the international prize court will apply. They first of all will apply treaties so far as they are applicable; secondly, they will apply the rules of international law; and, thirdly, they will apply the principles of justice and equity. There are no treaties on such subjects as contraband or blockade, but on the general question of prize law the Lord Chief Justice told us on a previous occasion that British prize law was practically the prize law of the world. It is only with diffidence that one ventures to differ from the noble and learned lord on any legal question, but it is sufficient to point out that although British prize law figures largely in the text-books and although it has a very real importance in deciding what international prize law may be, other countries do not accept the same view of British prize law as we do ourselves. It is unfortunate it should be so, but there it is; and therefore it is impossible for us to expect, without a convention or some negotiation, that we should get our rules and principles universally accepted throughout the world. So it came about that the naval conference was held in the years 1908 and 1909; this matter was thoroughly investigated and studied, and the plenipotentiaries at that conference produced and signed the Declaration of London. Before the conference assembled the noble and learned earl on the cross benches, Lord Desart, who had been connected with this matter for some time not only as King's Proctor but as Treasury Solicitor, went thoroughly into the matter together with the Secretary of Naval Intelligence, the Secretary of Imperial Defence, the Assistant-Secretary to the Admiralty, and two representatives of the Foreign Office who had had experience during the Russo-Japanese War and also of the negotiations during The Hague Conference. The duty of this committee was to study the history and the practice of British prize law and to advise His Majesty's Government as to insisting, or not insisting, upon the views previously held by this country and as to the modifications which might be introduced to meet the various recommendations made by other countries. So the Declaration of London came into being, and was discussed in the House in the course of the present year. The discussion on that occasion, I think, turned principally upon two points. The first one was the omission from the Declaration of any prohibition

of the right to convert merchantmen into warships upon the high seas. Nobody contradicts the right of any power to convert such ships into warships in its own ports; the question was that of conversion on the high seas.

The EARL OF HALSBURY. And the re-conversion into merchantmen.

EARL BEAUCHAMP. Yes; but the question I am upon is merely the right of conversion on the high seas and in ports.

The EARL OF HALSBURY. Yes.

EARL BEAUCHAMP. The noble and learned earl agrees. That is the point I was trying to make. So far as conversion on the high seas is concerned, we found that foreign opinion did not agree with ours, and on that question it was impossible to come to a conclusion, and the matter, therefore, was left open for the future. In any case your lordships would agree that if we were belligerents it would be the duty of the British Navy to hunt down those ships wherever they had been converted, whether on the high seas or in the ports of the enemy's country. As neutrals, the matter does not affect us so vitally. Foreign powers have done it in the past and they probably will do it again. The point I wish to put is that, so far as it is done by foreign powers, supposing we complain against the action of any such power, we are forced to complain against them in their own courts, and it is most unlikely that the court of any foreign power would declare that such action was illegal. Therefore, at present, our only hope would be that such illegality would be declared by an international prize court, as it is very unlikely that it would be done by the court of the country concerned.

The other point round which discussion ranged on the last occasion is the question of conditional contraband. The noble earl opposite, who is to move the rejection of this bill, devoted a good part of his speech on that occasion to this subject. The argument has been used by the Secretary of State that, without the Declaration of London, Great Britain runs the risk that her enemy will claim to prevent the supplies of foodstuffs reaching this country by declaring them to be absolute contraband and therefore liable to capture, starvation being, in the opinion of some foreign countries, probably the best way of reducing this country to submission. Such action was taken in the case of France in her war with China, and Prince Bismarck declared at that time that it was a legitimate act of war. The noble earl opposite, Lord Selborne, met this argument in the debate which was held in this House, to which I have already referred, by asserting that the diplomatic pressure of the United States of America would prevent any such action by an enemy power, because he said, and quite rightly, that the United States are very largely interested in the supply of foodstuffs to this country and that no power which

had already entered into war with Great Britain would run the risk of a further war with, or of alienating the sympathies of, the United States, and that the existence of an international prize court would prevent, or at any rate, would reduce, the effect of such diplomatic pressure. I hope I have put his argument as he would have put it himself.

We have an instance which will go some way to showing how far we may rely on the action of such a neutral power. Very much the same thing happened in the course of the Russo-Japanese War when a British ship which was carrying a cargo of paraffin for lighting purposes, the oil itself belonging to a United States company, was captured by a Russian cruiser. At the outbreak of the war the Russian Government had issued a list of contraband, containing a word which covered both naphtha and crude petroleum; but on inquiry the British ambassador was officially told by the Russian Government that that did not cover paraffin to be used for lighting purposes only. Notwithstanding that, the Russian prize court condemned the cargo as contraband and upheld the action of the Russian cruiser. According to the argument of the noble earl, the United States of America should have been able to bring so much diplomatic pressure to bear on the Russian Government that they would have compensated the merchants who had lost their cargo and prevented such action in the future. As a matter of fact, the United States Government contented themselves with protesting without any result at all. Therefore, although we have in this concrete case an example of what the noble earl depends upon for preventing such an action in the future, we find that the United States did not succeed in preventing that treatment of contraband which the Declaration of London will at any rate succeed in effecting. There is this further point, that America is more interested in the export of petroleum than in that of wheat, and before very long it is not unlikely that the supply of wheat from the United States will be much less so far as the supply they send to us is concerned, and that it will eventually disappear altogether. I think that that instance is a not unfair commentary to make on the argument of the noble earl opposite.

The other discussion ranged round three special points—the interpretation of the words “enemy,” “base,” and “fortified place.” With regard to the interpretation of “enemy Government.” I presume that the point is so well known to your lordships that I need not go into it in detail. I would remind noble lords opposite of the pledge given by my right honourable friend the Secretary of State for Foreign Affairs at the imperial conference, that this country would not proceed to the ratification of the treaty unless the view

of his Majesty's Government was upheld by the other powers. If the noble earl wishes the reference it is on page 107 of the report of the imperial conference. Sir Edward Grey used these words:

It is one of the points which we shall make a condition of our ratification that that view should be accepted by the other powers.

The EARL OF SELBORNE. Is that the view of the definition of base of supply?

EARL BEAUCHAMP. I am coming to that in a moment; this is with regard to "enemy Government." I ought to say, in passing, that His Majesty's Government do not agree with the interpretations which have been put upon these three phrases by noble lords who are opposed to the Declaration of London. We think that their interpretations are strained interpretations, but we are anxious to do what we can to meet noble lords opposite; and I think, so far as "enemy Government" is concerned, the noble earl will be satisfied with that explanation and guarantee of my right honourable friend.

Then we come to the point as to "base" and "fortified place." The view of His Majesty's Government of the meaning of the phrase "base of supply," as used in article 34, is that a place serves as a base of supply for the armed forces when the business of supplying those forces with what they require is organised and located there, and the stores required are collected and supplied to the forces from that place. A place cannot be regarded as serving as a base of supply for the armed forces merely because it is connected by rail or other means of communication with those forces and constitutes a source from which supplies might be obtained in case of need. Further, the interpretation which His Majesty's Government put upon the phrase "fortified place" in the same article, dealing as it does with the presumptions arising from the place of destination and consignment of goods, is that a "fortified place" means a place surrounded by military works capable of withstanding a siege and in which the military and civilian population are so intermingled that goods intended for one could not be distinguished from the goods intended for the other.

The EARL OF HALSBURY. Does the noble earl suggest that those are the words of the treaty?

EARL BEAUCHAMP. No; I am merely trying to state what the view of the Government is on the subject; and if the noble earl will allow me, I hope to say something which will satisfy him later on. A port cannot be regarded as a fortified place in the view of the Government merely because it has forts to protect it on the seaward side. The view of the noble earl opposite as to the meaning of "base of supply" is not shared by General Botha, although in the course of

the earlier discussion the noble earl referred specially to South Africa as being a place which could not be reached except through some such base. I would remind your lordships that not only did General Botha himself repudiate that interpretation, but also the imperial conference which met this year at the Foreign Office expressed its approval of the Declaration of London. I hope that of the various points I have mentioned the "enemy Government" point, at any rate, is met by what was said by the Secretary of State for Foreign Affairs at the imperial conference.

There remains, therefore, as matters of controversy and discussion the two points as to the meaning of "base" and "fortified place." In regard to that I am prepared on behalf of His Majesty's Government to give an undertaking, which I hope will be so far satisfactory to noble lords opposite that they will be willing to give this bill a second reading this evening. Part III of the naval prize bill does not become operative until it is brought into force by an order in council. It is not the intention of His Majesty's Government to issue any such order in council until they are satisfied that the other powers who have signed the Declaration attribute the same meaning to the words "base" and "fortified place" in article 34 of the Declaration of London as His Majesty's Government. His Majesty's Government are willing to undertake that no order in council will be issued under this act until it has been shown that there is such an agreed definition between His Majesty's Government and the other powers concerned. When this is so the definition will be laid before Parliament, and no order in council will be issued under this act until Parliament has had an opportunity of discussing the definition. His Majesty's Government are already in communication with foreign powers on this subject, and they have no reason to believe that the answer which they will receive will be anything but satisfactory to themselves and, I hope I may add, to noble lords opposite.

This bill, let me say in conclusion, is required even if the international prize court convention or the Declaration of London were not ratified. Part III is dependent on an order in council. With regard to that I have already, on behalf of His Majesty's Government, given a pledge which I hope and believe will prove satisfactory to the noble earl opposite. His Majesty's Government in this matter have acted with a full sense of their responsibility, having done their best to obtain the opinion of their expert advisers; and I venture to say if, under these circumstances, the amendment of the noble earl opposite is to be carried to-night, all those who are anxious that foreign affairs should be lifted out of the arena of mere party politics and that there should be continuity in these matters would deeply regret such an action on the part of your lordships.

Moved, That the bill be now read 2^a. [Earl Beauchamp.]

The Earl of Selborne, who had given notice, on the motion for the second reading, to move that the bill be read 2^a this day three months, said: My lords, it is true, as the noble earl stated at the commencement of his speech, that the main part of this bill consists of the consolidation of the prize court law. In respect of that part of the bill there is no controversy between the two sides of the House. It is only when we come to the international court of appeal that is tacked on to this consolidating bill that our difference with the Government commences. Speaking for myself, and, I believe, for those who act with me, I have no hostility to the establishment of an international prize court as such. If an international prize court can be formed which we think is competent to do the work entrusted to it we should welcome its establishment, but it does not follow from that that we are prepared to accept any court that is offered to us for this purpose.

I would ask your lordships to observe that the noble earl in moving the second reading of this bill said nothing at all about the composition of the prize court which was to be formed under the schedule. The very first point we have to consider is what is the court to which it is proposed to entrust these great functions. The court is to consist of no less than 15 judges. If we can be assured that all these 15 judges are competent jurists, even then I would say that they would be a bad court, because the court would be much too large. Who ever heard of a court of appeal of 15 judges? I know of no precedent or parallel for such a court in the history of jurisprudence. Therefore I demur *in limine* to this court on account of its size. When I come to analyse the composition of this court my demur turns to astonishment that the Government could ever have consented to such a court. Of the 15 judges, 8 are always to be representative of the 8 great powers. Then there are powers, such as Spain, Argentina, and Holland, who are not usually classed as great naval powers but who are powers of great importance in the world, whose co-operation in such an international task as this would always be welcome. Beyond that class of power I will read a list of some of the powers that are at one time or another to provide a judge or a deputy judge for this court: Colombia, Uruguay, Venezuela, San Domingo, Paraguay, Bolivia, Persia, Panama, Luxemburg, Costa Rica, Switzerland. Switzerland and Luxemburg are both inland countries. Other countries are Haiti, Servia, Siam, Honduras, Nicaragua, Montenegro, Cuba, Guatemala, Salvador and Ecuador. This is to be the international prize court.

I will not say anything disrespectful of those powers, but it is not inconsistent with respect to say that the powers whose names

I have read out should not necessarily have a place in a great international prize court. The British Empire owns half the mercantile marine of the world, and yet it will have no greater representation on this court than any one of the powers I have mentioned. If you do form a court of this kind, and I demur altogether to this system of forming it, I can see no justification for only giving the British Empire equal representation with one of the small Central and South American Republics. If in any important matter the representatives of the great powers were divided in opinion, is it not certain that every diplomatic influence that could be turned on the smaller powers to secure their vote would be turned on and that this court, instead of being a court commanding universal assent as a court of justice, would become a mere centre of diplomatic intrigue. This is not really a court at all; it is a sort of hybrid between a parliament of the world and a court of justice, and it fails even more signally as a court than it fails as a parliament. It is to such a body as this that you are asked to allow an appeal from our own Privy Council. While, therefore, there is to be an appeal from the Privy Council to this extraordinary body, which is neither a court nor a parliament, your lordships will notice that there can be no corresponding appeal from the Supreme Court of the United States. The representatives of the United States discovered that by their Constitution it was not possible to carry an appeal from their Supreme Court to any new international tribunal, and therefore a protocol has been signed allowing cases in which American citizens are concerned to be initiated from the commencement in the international court. That opens the door to this possible serious inconvenience, that cases might be carried both to the Supreme Court of the United States and also to the international court, and you might get two perfectly conflicting sets of judgments.

Now I ask your lordships to compare this tribunal with The Hague tribunal. The Hague tribunal consists of only 5 judges, and all of them have been jurists of eminence. It is not too soon, I think, for us to admit, and admit with great satisfaction, that The Hague tribunal has been a great success. But why? Because it is a court of justice, because its members are limited in number, because they are all jurists of eminence, and therefore its decisions have commanded universal respect. There is no comparison between The Hague tribunal of 5 judges, all of them jurists of eminence, and 15 representatives of a collection of powers, great, medium, and little, collected in the heterogeneous manner described and without any kind of assurance as to the qualifications of some of their members for the task entrusted to them. Sir Edward Grey in another place has not attempted to defend the composition of the court. He said

in effect, "You will get no other court but this." It is incredible that the powers of the civilized world who formed The Hague tribunal should be utterly unable to form a better international prize court of appeal than this. I say with a full sense of responsibility that if this is the only international prize court that is possible then I would rather have no international prize court at all, and that without any reference to the code of international law which that court might have to administer. I object to this court on the threshold as not a fit and proper tribunal to try in the last instance cases affecting the mercantile marine of the British Empire.

The law which this court would administer is only an additional inducement why your lordships should hesitate to confide such great interests to so inadequate a tribunal. In the House of Commons Mr. McKinnon Wood said that in naval matters international law was in a state of complete uncertainty and chaos. I think that is an exaggeration. I do not think there is any chaos or uncertainty about naval international law as decided either by our courts or by the American courts. The difficulty does not arise from chaos or the absence of any argued set of judgments, but from the fact that many foreign powers will not accept the doctrines laid down by the American or British courts; and therefore, as this proposed court can only administer international law, they would have, as I think one of the members of the convention in the first place cheerily remarked, to make the law very much in the rough. But His Majesty's Government felt that that was quite impossible and therefore they asked the powers to send representatives to London to try and make a code to which all nations should agree, and which would obviate the necessity of this court making laws very much in the rough. It is, accordingly, the accepted principles of international law as defined in the Declaration of London which this court would have to administer. But in addition, where the Declaration is silent, the court would have to act according to its own ideas of justice, equity, or good conscience. Is it quite certain in the first place what document this court would have to administer? There are the articles of the Declaration of London, and there is also the report of M. Renault upon those articles, and nobody has yet told us with authority whether the court would only have to look to the articles or whether it would look to the report as well as the articles. I express no opinion on that abstruse question; I only notice that authorities and experts differ. Some say that the report has equal authority with the articles, and others deny that the court could take the report into consideration at all. There is a substantial difference between the two. In some cases our position would be improved if the report was taken into consideration as well as the articles, but

certainly in one case at least the position would, I think I shall be able to show, be made worse.

And that brings me at once to the point which the noble earl put his finger upon as one which disturbs those who take the view that I do of this matter—the question of conditional contraband. Now, my lords, if we want to estimate the true position of this matter let us try and put ourselves into the position of a foreign power with whom we might unfortunately find ourselves at war. Rightly or wrongly it is surely manifest that that power would consider the question of food supply as the British heel of Achilles. It would feel that it could do more to injure us by any serious interference with our food supply, even if that interference were only temporary, than it could by any other possible means. It would know that we alone of the great powers can not supply ourselves with food. It would know that the store in hand is never large, and that really any interruption even for a few days of the stream of ships bringing food to this country might be productive to us of the most serious consequences. It would mean in the first place a rise in freights and in prices, and a shortage of food which might mean panic and riot. I think foreigners are largely inclined to overestimate the effect which such a pinch would have upon our population. I believe our people, if the war was one in which their heart was engaged, would not hamper their Government by riot or panic at a time of such emergency. That, however, does not alter the fact that the pinch on our population would be terrible. Therefore it is no wonder that a foreign power should make its plans almost exclusively at the beginning of a naval war with a view to creating a shortage in our food supply.

At the present moment food is only contraband of war if destined for the armed forces of the enemy or for a port of naval or military equipment. Our courts have decided what is meant by that. For instance Brest is, and Bordeaux is not, such a port, according to the decisions of our courts; or, if you translate that into terms of English ports, I take it it would mean that Portsmouth is, and Southampton is not, such a port. By article 34 of the Declaration of London a “fortified place belonging to the enemy or other place serving as a base for the armed forces of the enemy” constitutes a destination which would make food contraband. But the report says:

It may be a place used as a base of supply for the armed forces of the enemy.

Now, I am glad to see that there is no difference between the Government and the opposition as to the interpretation which we should wish to see placed upon the words “a base of supply,” but the question is what interpretation would be placed upon those words by

the international prize court of appeal. It is quite unnecessary after what has been said by Lord Beauchamp to repeat our arguments adduced to show how, with the instruction to do all he possibly could to interfere with the supply of food to the United Kingdom, the admiral of an enemy's fleet would argue inevitably that every port in the United Kingdom was a base of supply. I will not develop that argument, but I will give, with the permission of your lordships, an illustration showing that that view is not only likely to be held by the directors of naval operations in some continental countries, but is actually expressed as their view in military text-books at the present moment. On the question of what is a "base" now-a-days, General von Caemmerer says in his book, *The Development of Strategical Science*:

Railways have above all completely changed the term "base." * * * One does not base oneself any more on a distinct district which is specially prepared for that object, but upon the whole country, which, owing to the railways, has become one single magazine with separate storerooms.

Then, again, General Baron von der Goltz says in his book, *The Conduct of War*:

In western Europe the dense network of railways allows of reinforcements and supplies being brought up in a few days from the most remote parts of a country. It even obviates the necessity of restricting the base to one district, the whole area of the State becoming the base.

That is the view held in military text-books in Germany, and therefore I think it proves that we were justified in directing the attention of His Majesty's Government and of the country to the immense importance of the interpretation of the words "base of supply."

I was glad to hear what the noble earl said as to the efforts of His Majesty's Government to elucidate this point, but I do not quite see how, without a fresh supplementary convention dealing with this point, any document merely expressing the view of an individual power could bind an international prize court of appeal which had to interpret the articles of this convention. Therefore, much as I welcome the belated step which the Secretary of State for Foreign Affairs has taken, I do not think it is an adequate substitute for the clearer and more definite provisions which ought to have found their place in the convention. The objection of the opposition to the bill does not arise solely from the doubts and fears which we entertain as to the Declaration of London, but because we believe that the court of appeal to be set up by the bill is not a satisfactory court for the adjustment of international questions. It is not a tribunal to which we should entrust the final definition of such terms as "enemy Government," "a base of supply," and "a fortified place," having regard to the great importance to the mercantile

marine of this country of what the interpretation of those terms might be. It is an extraordinary fact that article 34 is textually the article proposed by one of the great continental powers. That in itself is not an argument against it; but I and those whom I have consulted complain that no discussion appears to have taken place as to the interpretation of the terms mentioned, and it does not seem to have occurred to the British representatives at the conference how important was the meaning of the term "base of supply." I may be in error; if so no doubt I shall be corrected, but we can not find any trace of a discussion upon this all-important point.

The EARL OF DESART. I hope the noble earl will forgive me for interrupting him. I may say that a great deal of the important discussion at the conference took place *en commission* and was not reported and did not appear in the minutes. Therefore it would not really be accurate to say that there was no discussion with regard to this point. I can not honestly answer at the moment from recollection what amount of discussion there was with regard to this point, but I can say that very often there were extremely important discussions that took place *en commission* of which no notes were taken, and therefore did not appear in the minutes of the full conference at which notes were taken. I will not say positively that that is what happened in this particular case, but I know that was so on many occasions.

The EARL OF SELBORNE. I am much obliged to the noble earl for what he has told us. I now pass from what the Declaration of London does say to what it does not say. Your lordships must remember how very important is the silence of the Declaration of London, because where it is silent the international court has to give its decisions very much in the rough according to its ideas of equity and justice. In regard to the conversion of merchant ships into cruisers on the high seas, I question whether it is true that no decision of the international court of appeal could affect us as belligerents. Our navy would treat all merchantmen converted into cruisers on the high seas exactly as they would treat such vessels which had been converted in port or as the regular cruisers of the enemy; but surely if the international prize court gave a decision contrary to the British view, and held that conversion was legitimate, the number of merchantmen converted on the high seas into cruisers which British cruisers would have to meet would be much greater than if such a decision had never been given. As neutrals we should be directly affected by such a decision of the court, and we might have forced upon us, by a court whose competence I venture to question, the very doctrine to which His Majesty's Government, through their representatives at the conference, refused to

agree. Under clause 28 British courts throughout the Empire would be bound to enforce the decisions of the international court in respect of a British neutral vessel captured by a merchantman converted on the high seas into a belligerent cruiser. Having enforced a decision of the international court in such a case how could British courts afterwards repudiate the very principles of law which we had ourselves enforced under this bill? Sir Robert Finlay made that point in the House of Commons twice, and no answer was given to it, and I do not think I am exaggerating when I say that we run the risk of having this very doctrine which His Majesty's Government have been the first and most strenuous to repudiate forced upon us by the decisions of this international prize court of appeal. The fact is that all the arguments which were so very eloquently put forward by the Secretary of State against setting up a court at all without a code, apply just as much now to the possibility of this court settling the question of conversion without a code and according to its own ideas of justice and equity.

By article 49 a neutral ship, taken as a prize by a belligerent, could be destroyed by the captor if its preservation might compromise the success of the operations in which the belligerent was engaged. Article 40 declares that a neutral ship can be seized if half or more than half of the cargo is contraband. In the case of ships carrying wheat the cargo is almost wholly wheat, and if wheat is contraband the ship is liable to seizure. I ask the House to consider the cumulative effect of articles 34, 40, and 49 and of the conversion of merchantmen on the high seas. Given that the great object of the enemy is to create a panic in the United Kingdom by cutting short our food supply, it is quite certain that the orders given to their naval officers would be to sacrifice every consideration to the success of this attempt. Therefore, is it not clear they might decide to treat any port of the United Kingdom as a base of supply and to take all neutral grain ships without exception and sink them? And this might be done, not only by regular cruisers of the enemy, by merchantmen converted into cruisers in the enemy's ports, but also by as many merchantmen as they had been able previously to arrange to be converted on the high seas. It has been said that all this might happen now. I quite agree, but the point I wish to make now is that the great question involved for us in each of these hypotheses, the principle involved, might be settled contrary to what we believe to be the true interpretation of international law in this prize court by the casting vote, in the first year, of Colombia or Bolivia, in the second year of Uruguay or Costa Rica, and in the third year of Venezuela or Haiti. That is not a joke, but a perfectly true statement of what is possible under the bill.

It is true that now we run the risk of having foodstuffs declared absolute contraband of war by any nation with which we are unfortunately at war. But our position is that as belligerents we prefer that risk to the risk of the decision of such a court as this in effect legalizing the doctrine in the peculiar circumstances of our case. As neutrals we prefer to trust to diplomatic protest during the war to the decision of this court after the war. We on this side of the House have had some experience in that matter both as belligerents and as neutrals. In the South African War, as belligerents, we had protests from neutral powers. In the Russo-Japanese War we were neutrals and we entered protests to the belligerent powers. We know both the weakness of protest as looked at from the point of view of the neutral, and the strength of protest as looked at from the point of view of the belligerent, and I have no hesitation in saying that the Government has underrated all through this controversy the effect of the protest by a strong neutral on a belligerent. That is borne out by the report of a committee on the national guaranty of war risks for shipping, presented in 1908. That report, which was signed, among others, by that distinguished naval officer, Admiral Ottley, who was also a member of the conference from which the Declaration of London emanated, says:

The danger of any material interruption to our supply of food and raw material is mitigated by the fact that such supplies would be shipped, in part at any rate, in neutral bottoms if British ships found the traffic too dangerous, and any belligerent with whom this country might be engaged in war might well hesitate to incur the hostility of a great power, such as the United States of America, whose vessels were so engaged by treating such articles as contraband of war.

The point is that if the doctrine of unconditional contraband is now pushed to excess, a neutral power could put great pressure on a belligerent Government which took that view. If the Declaration of London is ratified and an international court of appeal is set up, the belligerent would no longer pay any attention to the protests of a neutral, and would say, "We refer you to the international prize court." So that instead of the matter being settled during the war and the belligerent having to weigh the chances of incurring the hostility of the neutral, he would know that the decision, even if given against him, would be given after the war was over and after his particular action, if it has been successful, had had the full effect which he hoped from it. It is quite true that the British neutral shipowner now has to appeal to the court of the belligerent—I am quoting the words of Mr. McKinnon Wood—and it is because that is so that the opposition would be glad to see an international court of appeal which would carry with it the same confidence as The Hague tribunal now does. It is because we can not recognise the court estab-

lished by this bill as anything more than a parody of such a court that we ask the House not to read the bill a second time. We have to consider our interests both as neutrals and as belligerents, and the real question is, Do the Declaration of London, the prize court convention, and this bill taken together constitute an improvement or not on the present position?

Sir Edward Grey said the other night that there had been a great deal of exaggeration in this matter. I quite agree, but I also maintain there has been a good deal of evasion and misplaced optimism on the part of the advocates of the convention and the defenders of the bill. Certain it is that public opinion of a very formidable kind exists in this country hostile to these agreements. Practically every chamber of commerce has pronounced against them, and practically the whole shipping world. Naval opinion, I admit, is divided. There are very strong and numerous opinions on the one side, and there are opinions on the other; but what is most significant and to me quite inexplicable is that from the beginning to the end of this lengthened controversy we have never once had an authoritative statement of the considered opinion of the Board of Admiralty.

Your lordships have seen, no doubt, a letter in to-day's Times from Admiral Sir Reginald Custance, a distinguished naval officer, of whose opinions I speak with great respect; but I would ask your lordships to consider two of his expressions of opinion and to note a significant omission from his letter. He says that the absence of any provision prohibiting the conversion of merchantmen at sea into ships of war alters nothing; that is true, but surely, if the international prize court of appeal gave a decision in favour of the unlimited right of conversion, it would alter a great deal. Then he says that the safety of our food supply in war would depend on the strength and the use made of the navy rather than on the presumed immunity of neutral shipping from capture. That is true, a thousand times true; if the navy is not strong enough to protect our commerce, it does not matter for a moment how many neutral ships endeavour to bring food to this country, but it does not follow that we ought to regard with indifference the supply of food brought in neutral bottoms or with jealousy the provisions of this Declaration, which we believe will make the contribution of food in foreign bottoms more precarious than it is now. That letter, dealing with certain aspects of the Declaration of London and leaving no doubt upon our minds that Admiral Custance is in favour of it, says, however, not a single word about this bill or the international prize court of appeal. If Admiral Custance had felt on equally strong ground about this court on whose decisions so much will depend, it is not an extravagant supposition to think that he would have made a case for it in his letter, but he says not a word about it. I am prepared to differ from

Admiral Custance about the Declaration of London. I know my opinion is of no value compared to his, but I can put against his opinion the opinion of other great naval experts. In conclusion, what I do say—and in this proposition I ask your lordships to concur—is that, whether the Declaration of London be good or bad, this particular court of appeal is not one to which great naval and mercantile interests of this country should be committed; and it is because that is my profound conviction that I ask your lordships to read this bill a second time this day three months.

Amendment moved, "To leave out 'now' and add at the end of the motion 'this day three months.'" [The Earl of Selborne.]

The LORD CHANCELLOR (Earl Loreburn). My lords, I did not intend to endeavor to answer the noble earl or to take part at this stage of the debate, but I am constrained to do so because my noble friend Earl Beauchamp made a very plain and important suggestion which I should have thought that any statesman responsible not for a department but for the Executive Government of Great Britain which has to deal with foreign nations and with diplomatic policy might have expected would have been taken some heed of. The noble earl has apparently taken no heed of it. Let me point out what it is that we are really now doing. Here is a bill most of which is not controversial, but which contains a third part which deals with the subject matter of an international prize court and incidentally with the Declaration of London. Let us see what the position is. It was the British Government, our Government—for, after all, when we are dealing with our national concerns it is our Government, although it may not be agreeable to some members of the House—who made the proposal and asked foreign nations to come and agree with us, in view of the uncertainty of naval prize law, in order to see if we could come to terms. We have come to terms, though I quite agree that what they are it is wholly for Parliament to consider. We have not yet ratified them; the other nations are waiting to ratify them; and what we want here is a power to carry into effect one part of what was agreed to by means of the proposed legislation.

How shall we stand before the other nations of the world if we are denied by this House the means of giving effect to what we have agreed to, not lightly but after great pains and inquiry and with the best expert advice we could command and the best naval advice, and after having submitted to the imperial conference and having obtained the approval of the imperial conference? I do not say that that is a conclusive consideration. I do not deny that the matter should be sifted, but it is an important consideration. There was not a trace in the speech of the noble earl that he was speaking in regard to the action of this House toward the Executive Government of the British nation which has come to an agreement with the other

nations of the world upon this matter; there was not a trace that he had in his mind anything else than to throw out the bill. There are others sitting on that bench who, I know, will take a very different view, though I do not say that they will not agree with the course taken by the noble earl. No one could have done more than the noble earl did to set forth his views and objections, but after his clear and careful statement are your lordships quite convinced that you understand this question sufficiently to be prepared to set yourselves against the Executive Government and say that we are to go to the other nations and tell them, "It is true we proposed a conference, and that the whole Empire and the imperial conference have approved the suggestion, but the House of Lords so fully and thoroughly comprehends all the points that it is prepared to throw the bill in the face of the Government and to ask them to make the best excuses they can to the assembled powers that they have brought together, and to explain that they can do nothing owing to the action of the House of Lords"?

I submit this to your lordships and no more: ought you not to be certain that you thoroughly understand the precise point before you are prepared to throw out this bill? You ought at least to wait until we get to committee. This is only a bill to set up a tribunal, and it is only incidentally that the Declaration of London comes in. This is not a matter of legislation merely as such. Legislation is one thing affecting the interests of this country, but this is necessary as an act of executive power for the ratification of a particular course. You will find differences of opinion in naval circles and at the Admiralty. They are divided into two camps with regard to this bill. You have also the chambers of commerce. I do not wish to speak of them with any disrespect, but have they really considered it? You have had a raging, tearing propaganda about it in the *Daily Mail*—a paper for which I have no aversion at all—and other papers. Some of the gentlemen who have been conducting the campaign against this bill are excellent but irresponsible men. Now, your lordships are not irresponsible, and you have to consider whether you will accept this newspaper agitation, which people are asked to regard as *vox populi*, and, indeed, almost *vox Dei*.

The noble earl said that this controversy began with a good many objections, which, I think he admitted himself to be quite unreasonable. Every appeal to spurious facts has been made, but the objections now concentrated are few in number. The noble earl says in substance that the decisions of the British prize court ought not to be appealable to a court comprising 15 persons and representative of practically all the nations of the world. I think that he even mentioned our old friend Costa Rica. He complained of the number of these judges, and said that it was quite unprecedented in the history of jurisprudence. I am very sorry but he must really allow me to

differ from him. I have seen, I think, 15 judges. I am not certain it was not 16, hearing the celebrated *Franconia* case to decide what was the limit of extra-territorial waters, and the powers within territorial waters, and Lord Halsbury took a conspicuous part in the arguments. It is not, therefore, unprecedented in the history of jurisprudence. I remember once going to Paris and being taken into a court where there was quite a crowd of judges—I am sure more than 15. That is not by any means uncommon abroad; but, though I think there may be wisdom in our prevalent habit in England, although it used not to be the case in Scotland, of having four or five judges—some of the greatest decisions in the history of the country have been come to by quite small tribunals—that does not mean that there may not be wisdom in numbers. Is that the class of objection that so grips the minds of your lordships that you think it worth attending to in considering the course it is suggested you are to take? The noble earl says that he does not mind going to The Hague Court because it consists of eminent jurists and experts; but he asks your lordships to believe that this is to be composed of the riff-raff of the South American Republics possessing no knowledge or learning or anything else. Really, let us be serious. The prize court will always consist of the representatives of the eight principal powers. It is true that there is the right for the smaller powers, including Uruguay and Paraguay, very occasionally to send a judge or a deputy judge if they like. They must be of known proficiency in the matter of legal knowledge. Are we to be asked to throw all this away and to say that it means the riff-raff of South America? That is the sort of thing the noble earl implies by his very grave proposal, and I say it is not fair to those nations who have agreed to this convention.

THE EARL OF SELBORNE. I think that expression is the noble earl's own; I do not think it was mine.

THE LORD CHANCELLOR. I admit it, and if necessary, I will withdraw it and apologise to the noble earl if I have offended him, but I think it conveyed that idea, and was distinctly delineated by him, although he did not fill up the picture. That is, I think, what he wished to convey. This is a court that all the nations have agreed to. They were serious. They felt, like most executive Governments have felt, the grave inconvenience of uncertainty in regard to international law. These great statesmen who were consenting parties to this convention, so derided by the noble earl, meant business, and they did not think they were going to have a set of unpromising and uninstructed people to form this tribunal. The noble earl said a thing which I think was perfectly true. He said he could imagine easily a better court being formed. So could I. There are few

courts with which I have been connected which I could not, if I had the opportunity, better. But the noble earl must remember that we did try. There was a proposal made that the court should consist merely of representatives of the great powers. Your lordships can understand the angry clamour that arose among those powers which were not recognised as great when a proposal of that kind was made. It came to this, that there was no other court which could be obtained except this. What you have therefore to consider is whether this court or the existing system is the better. That is the first point on which you have to make up your minds. It is not a case of improving as you would like.

The present system is that, whenever a nation is at war and captures enemy ships, the belligerent itself is the sole judge and the sole guide as to what is right and what is wrong. It has to decide the case itself, being an interested party. Our mercantile marine is to be brought before a belligerent court, judging in its own case. For instance, the captures by Russia in the Russo-Japanese War gave a great deal of trouble to the Executive Government at the time. The decisions had to be taken by the Russian courts. Were they satisfactory? Your lordships know perfectly well that they were very unsatisfactory in some respects, and that in some cases we got no redress. That illustrates the value of the point of the noble earl. He says, "Ah, we were not bound by the Russian courts. We shall be bound by the new international court." It is true that we were not bound by the Russian courts, technically. Were we in fact? There was the case of the *Knight Commander* and the *Oldhamia*.

LORD ELLENBOROUGH. If the *Knight Commander* had been sunk under article 49, and had this Declaration of London been the law at the time, I do not think the owners would have got a penny of compensation. It is a doubtful question whether the owners of the *Oldhamia* would have obtained compensation.

The LORD CHANCELLOR. I am coming to that. There was the case of the *Knight Commander* and there were some other ships in which no compensation was ever paid. You got nothing for the *Oldhamia*, though we tried for six years. Technically you are not bound, but what is your method of redress? As the existing law is, the only method of redress, if the courts of a power which has captured your ship refuse to give you redress, is the stern arbitrament of war. Of course, we are not going to war on account of the *Oldhamia* or any question of the kind. The effect is that technically you are not bound by the prize court of a particular belligerent nation, but practically you are, and that has been the difficulty which has been better illustrated by the Russo-Japanese War than in any other case. I say it is better to have an international prize court than to have the tribunal

of a belligerent judging in its own case. At all events you have an appeal. The *Oldhamia* case might have been taken from the Russian court under this bill to the international prize court, whereas now there is no appeal of any sort or kind.

Supposing Great Britain is at war, the opponents of the bill say that it deprives us of the support which we would otherwise get from a powerful neutral, such as the United States, if an unscrupulous enemy tried to treat all foodstuffs as contraband and so starve us. That is the position taken up by the noble earl, to which he attaches great importance. Supposing, for example, we were at war with a continental power. The argument of the noble earl is that as the law now is, the United States would protest if ships carrying food were stopped by the belligerents, but that, if an international prize court is set up, the United States would not protest because they would consider themselves bound by the decision of the court. That argument really is not sound, because it never is worth the while of a neutral to go to war in respect of a question of that kind. We all know perfectly well that the sinking of a ship is a very small matter to a neutral, and they are not going to engage themselves in a great war on a small point of that kind.

You may depend upon it that, in regard to the food supplies of this country—and I have never failed to be one of those who recognised it—your protection is your navy, and you have got no other protection, and no kind of treaty or obligation will suffice to be a substitute for the strength of the navy. This argument of the noble earl is one which ignores that great point, without the remembrance of which we can never fairly discuss these maritime questions. So much for the court. On the balance of gain and loss I venture to think that your lordships will judge that the gain is ours. At all events, I would ask you very seriously to consider before you take the very strong step of throwing out this bill and leaving us to face the nations of the world with whom we have entered into negotiations.

The next objection is that, by the Declaration of London, States are not prohibited from converting merchant ships into fighting ships on the high seas. Our position at the convention was that you cannot under any circumstances convert on the high seas, but all the other powers—Japan, I think, was the only great power that supported us—said, "We will not accept that," and they never have accepted it. Everyone who is familiar with this subject knows that we are against the world alone, or practically alone, in upholding this view. The other powers that objected to our view included France, Russia, Germany, and Austria. I can not enter into a discussion of fact. I can only state that it is my distinct view of the

subject that the other nations will not accept it, certainly those I have quoted will not, and I say that Japan was the only great power that distinctly supported us. The United States of America took an attitude which was neither one way nor the other. That was our view. If we had been able to prevail, we should have prevailed. But we could not, and therefore a compromise was adopted. Not being able to arrive at a conclusion, the law was not altered, and each nation is entitled to apply, as it pleases, its own law.

It is surely rather difficult to complain that we have not secured consent when other nations were not willing to consent. We have not altered the law in this respect, but is said by those who object that, before you set up an international prize court, you could, if you were a neutral, give notice to a belligerent that you would not allow your ships to be captured by any vessel which had been converted on the high seas. And it is said that now after this international prize court is set up you could not practically say that because you are bound to leave it to the prize court. I think that it is a perfectly true observation, and I agree with the noble earl that it would be difficult for us, when the international prize court had been set up, to give notice beforehand, we being neutral, that we would not allow our ships to be captured by vessels which had been converted on the high seas. It means that if your ships are captured on the charge of carrying contraband or of breaking blockade by a vessel which has been converted on the high seas, you will no longer be able to make that a *casus belli*. Is not that really what it comes to? There are very few ships that are in the least likely to be carrying contraband or breaking blockade. It is a lawful but not a very meritorious service. The difficulty cannot arise unless one of that class of ships happens to be captured by a ship of war which has been converted on the high seas. I agree that by leaving this and other questions to the international prize court you are precluded from making it a *casus belli*. That is the total amount of your loss in this respect. On the other hand, if you are at war you get a great deal because the court does not affect any belligerent, and has no authority except between neutral and belligerent.

The next complaint is this. It is complained that under this convention a belligerent may destroy a neutral prize before condemnation by a prize court. Our contention before the powers was that you could not do that under any circumstances. I think all the powers maintained that they could destroy a prize at sea and that the prize court could afterwards decide whether you ought to pay compensation or not. There again our opinion was directly opposed to the opinion of nearly all the nations. The result was a compromise to this effect, that you may destroy if military necessity requires, but if military necessity does not require it you must pay compensa-

tion, whether or not the ship destroyed was a lawful prize. We have gained by that because we have limited the powers which practically all the other nations of the world claimed to use in an unfettered sense. We have succeeded in obtaining a limitation of that, and that is good for us in every way. As belligerents we obtain a right like other nations to sink prizes if military necessity requires it, and I am told there are many sailors who think it might be necessary for us to use that power in some cases. If we could prevent other nations from sinking without condemnation by a prize court, it might be better, but I believe naval opinion differs on that subject also, and since we have practically the whole world against us on that, are we not right to come to a compromise such as I have indicated?

I now come to the last point which the noble earl made a matter of complaint. He said that under the language of article 34 of the Declaration of London our enemies might seriously interfere with the food supply of this country by treating every port in the United Kingdom as a "base," and so stopping neutral ships laden with food coming to the United Kingdom. We say that the word "base" and the ancillary word "fortified place" can not mean what the noble earl is afraid of. We also say that 90 per cent of our food comes in British ships, so that the danger if it be a danger only affects 10 per cent of our food supply. At the same time we recognise that it is a thing on which the public opinion is sensitive, and it is the only thing that has any real substance. And this is the offer which was made by my noble friend Lord Beauchamp, and, I am afraid, practically ignored by the noble earl. Let us see how far it goes. It says:

Part III of the naval prize bill does not become operative until brought into force by an order in council. It is not the intention of His Majesty's Government to issue any such order in council until they are satisfied that the other powers who have signed the Declaration attribute the same meaning to the words "base" and "fortified place" in article 34 of the Declaration of London as His Majesty's Government. His Majesty's Government are willing to undertake that no order in council will be issued under this act until it has been shown that there is such an agreed definition between His Majesty's Government and the other powers concerned. When this is so, the definition will be laid before Parliament, and no order in council will be issued under this act until Parliament has had an opportunity of discussing the definition.

I want respectfully to put again to your lordships the considerations with which I commenced. This House has the power of throwing out this bill. It has the power of placing us in a position which your lordships can imagine with regard to foreign nations, in the face of the advice of the Executive Government, of those gentlemen who were commissioned by the Government without any pretence of party preference, sent out to negotiate and discuss this subject; in the face of the other States comprising the British Empire on the imperial conference with the exception of Australia, which adopted a

neutral attitude, and upon the ground mainly of the speech of the noble earl, Lord Selborne, supported by a newspaper agitation and the adverse criticism of some chambers of commerce. That is exactly the situation, and so anxious are we, not from a party view—and I am sure the same could be said of the other side, for there is no party interest in this business—so anxious are we that this which we believe to be a valuable and useful bill should be promoted and passed into law, that we have made the offer which I have read out to your lordships. I venture to think that this House, with its sense of responsibility, will think twice, will think thrice, before they will do what they are asked to do by the noble earl.

The EARL OF HALSBURY. My lords, I quite agree that technically we are engaged simply upon a discussion of a bill which is to set up a new tribunal, but I think it quite impossible adequately to consider its importance and relevancy without some allusion to that which I agree, in strictness, is quite beside the particular matter which your lordships have to decide. I think the matter lies within a very small compass, and I certainly do not propose to do what I think it would be inadvisable indeed to do—namely, to go over the whole question of the Declaration of London. I think it practically comes to this, whether we are going to alter international law, and herein I must ask the noble and learned earl a question. He adheres to the opinion which I understood he gave to me on a former occasion, that M. Renault's views are authoritative. Upon that a great deal of this question turns. If the views of M. Renault and the code which he makes up out of the Declaration of London are in truth authoritative and the tribunal to be erected is to be bound by them—I understood that was the noble and learned earl's admission to me on a former occasion—if he adheres to that opinion, then I can not help saying that it appears to me that this bill gives us the only opportunity which we can have of authoritatively determining whether that part of the Declaration of London is to be binding or not. The treaty-making power is in the hands of His Majesty, of course advised by his ministers, and in those circumstances all we can do is to prevent the making of a new law which is not within the sovereign's prerogative, and which we have the power of dealing with. And if, in truth, what we see in this bill is something injurious to this country, we have the right, and I venture to say the duty, to insist upon our right to prevent that injury being done—

The LORD CHANCELLOR. Will the noble and learned earl allow me to answer a question he put just now? I ought to have mentioned it before in regard to the general report. This is what happened at the imperial conference [page 107]:

MR. MALLON. Sir Edward, perhaps this would be the point to put in a question: What do you regard as the exact legal force of the general report?

SIR EDWARD GREY. The general report is the report of the conference, and our view is that it was accepted and became part of the conventional arrangement, in the sense of being an authoritative interpretation of the Declaration of London; that is one of the points which we shall make a condition of our ratification, that that view should be accepted by the other powers.

That is exactly what I think I said in answer to the noble and learned earl on the last occasion.

THE EARL OF HALSBURY. I rather thought that was the answer which the noble and learned earl would give. But then we are dealing with that particular document—I hesitate to describe it by any particular name—and that document lays down as one of its provisions that the court shall determine the law if in their view the law has not been already determined. It also provides that where they think it proper to do so they shall lay down their own law, and I must say that it is described very candidly what their view of that is. Their view of what is right is to be their view of what is justice and equity. You are erecting a new tribunal and giving it no code; but you give it absolute power to determine what is right. That sweeps aside 200 years of decisions and says that this new court shall determine. I protest against any such thing being done. It was said that Gustavus Adolphus had his treaties of peace and war under his pillow; he carried them about with him. But, at all events, without going to that extreme limit, here is a court that has given satisfaction to a great degree in an enormous amount of litigation, established among ourselves, with a reputation. I need not mention many names, but Sir William Scott, and in more modern times Dr. Lushington and Sir Robert Phillimore and a great many very learned persons, have established, gradually established, a system and a code of international law which has commanded respect in every country in the world.

Now for the first time that I have heard of, instead of looking at what is actually agreed to in the code, looking at the actual words and the different articles of the treaty itself, we are to look to this which has been agreed upon by this somewhat extraordinary convention, and your lordships are to be guided by that in determining whether or not you will erect this new tribunal. If there is one thing which renders administration of law more difficult than it should be it is the question of there being an exact statement of what the law is. From time to time we are constantly endeavoring to ascertain what is meant by certain words. But if, besides that, you are going by what the secretary has drawn up—I do not know what M. Renault is by profession, but he has drawn up this report which is to be the authoritative explanation of what the code means—I confess it seems to me sufficient to condemn this bill. I certainly never would agree to any such tribunal unless I had absolute and

perfect confidence in it; and some of these questions, which are, by the admission of the noble earl himself, most important questions, have been left open questions to be determined afterwards by this new court.

I do not wish to go through them all, but take this question of the conversion of merchantmen. I think the noble earl has underrated this, because what it practically means is the re-introduction of privateering. They might very readily be turned into war vessels. A good many ships of the mercantile marine in these days are built in such a form that without much difficulty they could be turned into ships of war. They might, at some time or other, when at sea, without any notice at all, be turned into war ships and then when it was convenient, revert to merchant ships. If that would not give opportunity to privateering, I do not know what would. I think the noble earl is a little mistaken about the agreement of the different powers in that matter. I understand that the decision was seven to three; but what objection was there to determine the matter one way or the other? I think it so important that I would rather have surrendered the treaty than that the matter should be left where it is. Again, why was not the definition of "base" determined then? Why did not those who had the responsibility of agreeing to this treaty say, "When you speak of a base, let us know what is meant. Let it be defined." Instead of agreeing or disagreeing at the time when there was an opportunity, we have, as my noble friend says, this offer.

The LORD CHANCELLOR. We have always maintained the same thing about the word "base." I believe those who negotiated never thought this point would be raised, and I do not now think it could be raised. That is our view. We say we are perfectly prepared to give you the undertaking that we shall see it defined before the convention is brought into effect, and surely your lordships will be satisfied with that. That is a fair offer.

The EARL OF HALSBURY. That is my case. Are you going to do it whether we agree to this bill or not? Are you or are you not going to say that you will not accept until after an order in council and until after a discussion in Parliament?

The LORD CHANCELLOR. We should not accept any meaning except that which we have stated in this House to-night. I can not state it any fairer than that. That is our view, has been our view, and will be our view throughout.

The EARL OF HALSBURY. Very good, then. I can not understand the noble earl when he uses such a phrase as "our offer." What offer? Is it an offer to the majority of this House, or is it not? And if it is an offer may I ask, has any precedent for any such procedure ever happened in this House? I venture to think not. I do not desire

to discuss the Declaration of London. We discussed it at some length before. But what I would like to say about it, speaking generally, is this: I agree entirely with what the noble earl said about our being dependent upon the strength of our navy, and every one knows that the great power of this country is in its navy. But I can not help saying that the Declaration of London appears to have been conceived in the spirit of increasing the powers of the nations with large armies and decreasing the powers of those who are in a great measure dependent upon their navy. The noble earl threatens us, as it were, with the displeasure of those powers whom we invited to come to agree with us and who have agreed with us to some extent, although they have left these open questions and not agreed with us entirely. We are told that if we reject what has ultimately been done, we expose ourselves to a great responsibility. I do not want to use the language of braggadocio, but I think we are entitled to have our own view on this subject and I hope we will stick to it and not be swayed by the consideration that the other countries who do not agree with us may be displeased if we do not agree entirely with them. For one thing, as I pointed out, we have not a defined code which this new court is to observe. It is given absolute and unlimited powers such as I believe no court ought to possess; and in these circumstances I regard this as one of the most mischievous and reckless proposals I have ever seen put before your lordships' House.

LORD MACDONELL OF SWINFORD. My lords, I intervene in this debate with great reluctance, but as a member of your lordships' House who has endeavored to make himself master, so far as he could, of the intricacies of this discussion I thought that perhaps it might interest your lordships to hear the results at which I have arrived. After reading the papers with which we have been flooded, I came to the conclusion that the subject might be most properly considered from two points of view: the case of this country being a belligerent; and the case of this country being a neutral. In the former case, when Great Britain is a belligerent, it is admitted on all sides that the bill has no application. It will in no degree fetter or limit the freedom of action of this country, consequently, I may put that aspect of the case out of consideration. In the case where Great Britain is a neutral and her ships suffer loss, Great Britain has at present no remedy except that which she can seek in the enemy's prize court. It seems to me to be obvious, therefore, that the provision of an independent international court of appeal of this description must necessarily be of some use. Whatever the constitution of the court, it gives to the applicant for redress some chance of obtaining it. He has an appeal from the court of the enemy's country, and consequently he may succeed in his appeal. From that point

of view it seems to me that the international court is a clear gain to this country.

On the other hand, take the case of Great Britain being a belligerent and seizing neutral property. The neutral owner will have, in the first instance, his remedy in the prize courts of Great Britain, and, as the noble and learned earl has said, these prize courts are so excellent and have established such a reputation throughout the world for fairness and justice that it may be hoped that the applicant will go no further, and that he will obtain in those courts all the assistance necessary. But assume that he has not the same confidence in the English prize courts that we have, it will surely be of great advantage to him to have an appeal to this independent tribunal. And I can see no reason why Great Britain should refuse him that appeal, unless it be the object of Great Britain to bring pressure to bear upon neutral States in order to bring about the cessation of the war. These points of view occur to me as justifying the establishment of this international court, and I must say that from all I have heard to-night I see no reason for changing the independent conclusion to which I came.

LORD DESBOROUGH. My lords, having brought forward a motion on this subject in your lordships' House on March 8 last, I hope I may be permitted to make one or two remarks on the subject, although it is very far from my intention to go at any length into the question of the Declaration of London, which has been fully and amply discussed. The noble earl who moved the second reading of this bill remarked that the whole of the criticism would be directed to Part III of the bill, which sets up this international prize court, but there is another matter to which I would like to call the attention of the Lord Chancellor for one moment. It is on a constitutional point. Clause 30 in Part IV of the bill seems to me to infringe the prerogative of the Crown. I am not a lawyer, but I believe it is absolutely admitted by all lawyers that prize inures to the Crown. Now to my mind clause 30 does most decidedly interfere with the prerogative of the Crown in the matter of prize, and I should like to ask the Lord Chancellor whether that is the case. It has before now only been found out at the last moment on the third reading of a bill that the prerogative of the Crown has been infringed. This has occurred several times in the House of Commons. On one occasion, in April of 1852, Mr. Speaker, on the third reading of a bill, declined to put the question, and the proceedings were declared null and void. In the year 1866 the Speaker refused to put the question on another bill, on the ground that the House could not interfere with the prerogative of the Crown. A similar thing has also happened in your lordships' House. There was a bill connected with the diocese of St. Asaph and Bangor. The royal prerogative was affected by that bill, and what happened?

The Lord Chancellor at that time desired the instructions of the House, a committee was appointed, and the bill was withdrawn.

THE LORD CHANCELLOR. I certainly never heard of this point before. I am not at all sure that private property belonging to a British subject would inure to the Crown. But I will look into it. The consent of the Crown can be given at any stage.

LORD DESBOROUGH. The Lord Chancellor says that the consent of the Crown can be given at any stage, but I should like to point out that the Crown, in person, can only place the prerogative of the Crown at the disposal of Parliament. The Crown, as far as we are concerned, is now in commission.

THE LORD CHANCELLOR. Certainly.

LORD DESBOROUGH. Whether the prerogative of the Crown can be placed at the disposal of Parliament by wireless telegraphy I do not know, but my point is this. Suppose, for instance the *Olympic* or the *Lusitania*, has been captured by a foreign power and recaptured by British forces. Hitherto, the Crown would dispose of the prize money, but that power is taken away by clause 30 of the bill, and that is the point on which I should like the opinion of the Lord Chancellor. However this may be, what we are considering at the present time is whether the court that is proposed to be set up is a good court, and whether the rules, as far as they are laid down, which it is going to be governed by are good or bad rules. I have no hesitation in saying that in my judgment—which does not go for much, but I have spent a year in considering the various points raised both by the Declaration of London and by this bill—I believe the court to be a thoroughly bad one, and the rules to govern this court to be, if possible worse. The court which is going to be raised to revise our prize court decisions and those of the King in Council is to be composed of a motley array of various States, 45 in number. I believe it is absolutely impossible to conceive a more unsuitable court than that to act as a court of law, revising the decisions of courts which have been given, after due consideration, in various countries. It is really a parliament of States selected, as far as I can see, quite haphazard, and on no fixed principle of any sort or kind. As a matter of fact, the United States refused to be bound by this court. They have absolutely declined, as far as I understand, to have the decisions of their prize courts and of their prize courts of appeal revised by this court. They have taken power, I admit, not to have the decisions of their prize courts revised by this international opera comique court, but to find other means of enforcing their decrees.

THE EARL OF DESART. I am sure the noble lord is the last man to desire to make a false point, and I can assure him that the difficulty was not raised by the United States representatives till the last days

of the conference. It was only disclosed just a few days before the conclusion of the conference—it had not been raised before—that under the Constitution of America, which could not be altered without very great difficulties, it was not possible that there could be any appeal against a decision of a Supreme Court. There was no unwillingness to submit to the international prize court. They said, “We must try to devise some scheme by which we can come before the prize court.” It was not that they objected, but it was found to be constitutionally impossible.

LORD DESBOROUGH. The fact is, it is contrary to the Constitution of the United States to have their prize court decisions revised by this international court, and I only wish it was the case with us at the present time. It is rather curious that the United States prize court decisions, which are founded upon English common law, should be impossible to be reversed and that they should stick to them, while we should have to submit our decisions to the consideration of this very composite body, with its very curious and very nebulous rules. The composition of this court has already been brought before your lordships’ House this evening. I have looked up some of the records of the States who are to revise our prize court decisions, which have been the admiration of the world for 200 years. No fewer than seven of these States are at present unable to meet their creditors, and I have also looked up one other State in the *Encyclopædia Britannica*. I have a sneaking regard for this State. But I should like to bring before the House some conception of this supreme court and the jurisdiction which is going to revise the decisions of the English prize courts. The State to which I allude is the respectable but not very large Republic of Haiti. I find that it consists of just about twice the area which used to be in the jurisdiction of the Thames Conservancy with regard to the purification of water. It has an army of 7,000 men and its navy has gone to the bottom. I believe it consisted of only one gun boat, but that, unfortunately, met with a mishap two or three months ago. According to the *Encyclopædia* [vol. 12, p. 825], corruption is spread through every portion and branch of the Government; justice is venal, and the police are brutal and inefficient; the inhabitants appear to be kindly, but ignorant and lazy, and have a passion for weird African dances which they perform to the accompaniment of a tom-tom. I have not a word to say against this State, because I believe it is a most enjoyable place to stay in, but it would have the power of appointing a deputy judge to this international court, and this deputy judge would, in certain circumstances, have an equal voting power with us, who possess 50 per cent of the sea traffic of the world. Haiti may, under certain conditions in the third year, replace, as far as I understand, Venezuela, and when they replace Venezuela the gentleman appointed by Haiti

will have equal power with us. He will deliberate in secret; no one will know how he votes, and he may, in some important maritime question, be able to turn the scale against this country. Though I have nothing to say against Haiti, I must say that if a Republic of this character has the power to appoint a judge to this supreme court, surely there are other States of a less corybantic nature who should have an equal power of appointing a judge. For instance there are our dominions, Australasia, Canada and South Africa, who have not one single member, though they have one-sixth of the sea trade of the world.

There is another rather important question with regard to the court. The language of the court is not yet determined. No one has the smallest conception what it will be. The court has power to appoint its own language. The court, as constituted, has not yet had its language defined, except that there is one provision which says that the language of the court in first instance may be used. Take a case before Japan. Supposing a case came up first of all in the Japanese court, you would have Japanese as the allowed language before the international prize court, and I suppose, if you allow the other party to use his own language, you may have Turkish. Then also the court is allowed to speak in its own language, which may be French, or Dutch, or anything. I venture to point out these questions, because they are too large to be left open. What would happen to a private litigant who went before this court? First of all, he has not the smallest conception of the language he has to plead in. This is a court of appeal; he may have been through two other courts before, and he would find it very expensive. If he is in Russia he would have to go through three courts, and then he would come to this court, in an unknown language, in which he has to instruct counsel, and even then the utmost he can get is the bare value of what he has lost. There will be no compensation, and a great many deductions are to be made from what he might get, including possibly the cost of a commission.

Then, the powers of the court are also very strongly objected to. The powers of this court are absolutely unrestricted. M. Renault most carefully says that this court is to make the law. He says so in this report, which we now know to be absolutely equally binding with the Declaration of London itself. This, it seems to me, instead of producing order out of chaos, makes the whole business absolutely uncertain, because no one can know what decision is likely to be arrived at. As to the effect of the court's decision, we are bound to carry it out according to clause 28, which says:

The high court and every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the international prize court in appeals and cases transferred to the court under this part of this act.

Then we have also been told by the advocates of the bill that although we may suffer on other points, at all events, on blockade, we gain on the whole, and the argument has always been that because we gain on blockade therefore we were to sacrifice the whole of our foodstuffs coming to this country which may be carried here in neutral vessels.

But with regard to blockade, I must say I strongly dispute that point. Sir Edward Fry, our head commissioner there, has admitted that the rights of England as a belligerent suffer under blockade. Perhaps it is unnecessary to quote the exact passage, which I have here, but the laws of blockade seem to be the most extraordinary laws ever invented. Supposing you are blockading a port. You have a number of ships told off to blockade it, and a sort of undefined blockade area is established. In this area, you may catch, if you can, a ship that is breaking blockade. Of course, a ship that is doing that is either succouring the enemy or carrying arms and ammunition against the lives of your own people. But it is only in this area that you can catch this vessel. If she gets out of this area or zone you are not allowed to interfere with her, and the amusing thing is that only one of these ships told off for blockade duty is allowed to catch her at all. It would be useless to send a wireless message to one of your cruisers to catch this vessel, because directly she gets out of this area you are bound to let her go, and the cruiser in question not being one of the blockading force is not allowed to act. It is just as if you live in Belgrave-square, and some one commits a burglary in your house there, and you have a policeman whose sphere of operations is Belgrave-square. According to these rules it would be only the policeman in Belgrave-square who could catch the burglar, and only in Belgrave-square. If the burglar gets outside the square that policeman can not touch him, neither would an officer on another beat be allowed to touch him. I will refer briefly to what has been said by the Lord Chancellor with regard to M. Renault's report and the offer which has been made by the Government—

The LORD CHANCELLOR. That is the general report.

LORD DESBOROUGH. My own opinion with regard to these articles is that they certainly want retranslating. The translation is very bad, and in many cases does not convey the meaning as it is in French, and the French text is binding. Besides that they want to be altogether redrafted. If this House or the other House of Parliament agreed to an important treaty like this with the articles so ill-defined, it would certainly not conduce to justice in the future. Now, M. Renault has a long report on article 33, which has already been alluded to, with regard to foodstuffs; this requires a great deal more than merely a new definition of "port of supply." M. Renault speaks of port of supply as any port which may supply food to the army,

but he goes a great deal beyond that. What he says in this report is that "the State is one," and therefore if you supply food to a civil department, that civil department could send it on to the army department and therefore the food would be contraband. The Lord Chancellor shakes his head, but I think I am accurate. Monsieur Renault says:

The State is one although it necessarily acts through different departments. If a civil department may freely receive foodstuffs or money—

That is not the question of a port, which the Government is going to define—

that department is not the only gainer, but the entire State, including its military administration, gains also, since the general resources of the State are thereby increased. Further, the receipts of the civil department may be considered of greater use to the military administration and directly assigned to the latter. Money or foodstuffs really destined for a civil department may thus come to be used directly for the needs of the army.

There is no question of a port here. This is his explanation of whether you may send food or not. You may not consign food to a civil department because, forsooth, they may turn it over to the war department, and therefore, as he says, the whole State might gain. But that is the position in England at present. We have no neutral ports. Directly you come to a question of ports under the Declaration of London, why every ounce of food coming to this country in neutral ships would be absolute contraband. The definition is in article 24:

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband.

And the first of these things is foodstuffs—the food of the people which we import at the appalling rate of £484 a minute, including tobacco. Here, under this precious article, all this food may, without notice, be declared conditional contraband. Article 34 goes on to show how this conditional contraband is converted into absolute contraband, and one of the reasons is that it may be taken directly to a port which may be a port of supply for the army. Under the old law, it used to be a port of naval and military equipment—a port, as the noble earl, Lord Selborne, said, of equipment, like Portsmouth. The States who are going to sit in judgment on us, would be bound to construe it as it is put here, not according to what the Lord Chancellor or the Government says it means.

The LORD CHANCELLOR. I am sure the noble lord does not want to mislead the House. I would not presume to set my opinion against his as to construction, but we told you plainly by a written document that our construction is just the same as that acknowledged by the

noble earl. We have said we will not bring this into effect unless we get the consent of the other nations to the same construction.

LORD DESBOROUGH. When the phrase comes up it will then be time to discuss it and see if it is adequate. But my contention is that there is a great deal more that has to be altered in the Declaration and the report to carry out the intentions of the Government. Whole pages will have to be redrafted. As it stands, the report will occasion much confusion, as in several places it is impossible to reconcile it with the Declaration itself. I do not wish at this late hour to detain the House, but I should like to say that the Lord Chancellor, whom I personally very much revere, has made a most touching appeal to the House, from his point of view, not to go behind the agreement arrived at, after due consideration I think he said, on this very important matter. I have just come back from Canada, where a similar thing has happened. What did we have there? We had a ministry, without any mandate from the people, without even their knowledge, signing an agreement with the United States with respect to certain reciprocity arrangements. After signing it they referred that document to the people. They were committed to it, but the people would have none of it, and I venture to say that if this Declaration of London, with its prize court, which I have attempted to very briefly describe though I have not done justice to the subject—if this prize court convention and the Declaration of London were submitted to the people of this country they would receive a most emphatic condemnation if one can judge from the declared opinion of those representative bodies which have considered them. I am sorry that the noble earl rather scoffed at the chambers of commerce. I can only say that as far as I am concerned I have looked into this Declaration with an absolutely unprejudiced and unbiased mind. It was, I acknowledge, the impartiality of ignorance which was admittedly shared by a large number of people, as the country was not aware of what was being done in its name. But the London Chamber of Commerce appointed a committee a year ago last August. We asked others to attend, men learned in the law, especially in maritime law, representatives of the grain trade, Lloyd's, and all the various great industries of the country. We sat, I think, for a month. It was not a superficial examination but a most careful consideration of every clause of this bill, and we drew up a reasoned commentary which we forwarded to the Government, who treated it with a very slight sort of attention. But the main thing is this, that if this proposal was submitted to the country I am perfectly convinced, judging from the feelings of the representatives of the shipping trades, the chambers of commerce, both the services, the corn trade and insurance societies, it would receive a most emphatic condemna-

tion. I do implore the Government not to ratify the convention or force a bill on the country to which I firmly believe the whole country is most determinedly opposed.

EARL BRASSEY. My lords, my observations will be brief. As president of the association of chambers of commerce, I have had ample opportunity of knowing their opinions. The majority are opposed to the ratification of the Declaration. They might have taken a different view if they had been consulted at an earlier stage and Mr. McKinnon Wood's able addresses had been delivered before and not after the conference. Chambers of commerce are not unanimous. In the port of Liverpool Mr. Royden, president of the steamshipowners' association, spoke in favor of ratification. My lords, not without cause the Government has been moved to take action in this matter. Our experience of the Russo-Japanese War had shown, not for the first time, that international law was in a state of chaos. A tribunal was needed more satisfactory than the prize courts of the enemy. The subject was brought forward at The Hague. It was decided that an international prize court should be established, and that representatives of the powers should meet to draw up an agreement as to the law which the court should administer. We invited delegates to meet in London. It became the duty of the British Government to make choice of representatives. The noble and learned earl who sits on the cross-benches (Lord Desart) was the British plenipotentiary. He is an eminent authority on maritime law. Our naval delegates were officers exceptionally qualified. Throughout the proceedings they were in close touch with the Admiralty. The Declaration was submitted to the colonial conference lately held. The premiers had expressed regret that the dominions had not been consulted. They were in a critical mood. After deliberations extending over two days, and hearing the explanations offered by Sir Edward Grey and the Prime Minister, a resolution moved by Sir Joseph Ward, approving the ratification of the Declaration, was passed by the members of the conference, the Government of Australia abstaining. What, it may be asked, do we gain by ratification? It is an advantage to set up an international court. At first view it did not seem necessary that the members of the tribunal should include representatives of the minor powers. The Lord Chancellor has explained the difficulties and the reasons why the court is to be constituted in the manner proposed. It is an advantage to have a code of international law covering all points on which it is impossible to come to an agreement. Let us not attach undue advantage to codes. *Inter arma silent leges*. As the royal commission on food supply rightly observed, in a time of stress and strain the temptation to disregard legal restriction might easily become too great to be resisted by naval officers away from the control

of their Government. We are brought to the old conclusion that to keep the sea free to the British flag we depend in the last resort on the navy, and I take on myself the responsibility of saying that at the present moment we are not unprepared.

[The sitting was suspended shortly before 8 o'clock and resumed at a quarter past 9.]

LORD ELLENBOROUGH. My lords, the naval prize bill is a bill to benefit foreign lawyers at the expense of British shipowners. In the Russo-Japanese War a few British merchant ships were captured and condemned by the belligerents. The amount of shipping lost was but a drop, as compared with the ocean of our total commerce. During, and after, that contest some of our shipowners complained about the uncertainty of war, and wished to make quite sure as to whether their ships would be captured or not under a variety of circumstances. Had they ever read history they would have known that there is no such thing as certainty in war; that they might as well have asked for the moon or for certainty at auction bridge. Unfortunately, Sir Edward Grey's knowledge of military history was also imperfect, and instead of telling them that they were asking for what could never be guaranteed, he called a conference of continental powers with large armies, who proceeded to outvote the island power that relied on the sea for its food supply. *Que diable allait-il faire dans cette galère.* Had the Declaration of London been in force during the Russo-Japanese War the owners of the *Knight Commander* would not have been entitled to compensation. She carried contraband and would have been sunk under article 49. The owners of the *Oldhamia* might or might not have received compensation. It is not a certainty. But as a friend of the *entente* with Russia I regret that that country did not allow the *Oldhamia* case to go before arbitrators. It is not too late. If she did this it would allay a feeling of irritation, and make it easier for both countries to act in alliance with one another if it became advisable for them to do so.

Some of the conventions are worse than the Declaration. Article 1, chapter 1, orders a belligerent to forward the captured dispatches of his enemy, unopened, with the least possible delay. This is a thing that may be done in comic opera, but not in real life. Article 3, chapter 2, practically orders our admirals to allow the enemy's fishing boats to act as scouts and mine layers, until actually caught in the act. If in war a First Lord of the Admiralty was to insist on our naval officers doing these things, I think that his subsequent lynching would be a matter of certainty, unless he could manage to shift the blame onto the shoulders of a naval man, as Newcastle did to Admiral Byng in the eighteenth century.

A large number of retired admirals have signed a petition against this Declaration. Mr. McKenna has endeavoured to pour contempt upon them, on the ground that only 11 of them had served as senior flag officers. According to his theory, their opinions alone could be allowed to count. He said that no distinguished officer whose opinion upon a technical subject is worth more than that of the man in the street is against the Declaration. He also said that naval officers vary in their views; but that upon the construction of a treaty of this kind naval opinion is not liable to be well-informed. Now, there are some stations on which it is possible to serve as senior officer of a fleet without having ever to settle an international question. The senior officer present is the man who has to settle international difficulties, then and there, on the spot, whether he be a captain, commander, or lieutenant. His rank has nothing whatever to do with it, as long as he is the senior officer present. He must often act on his own responsibility when out of the reach of telegraphs. He can consult the law books supplied by the Admiralty, but he has generally taken the precaution to read them beforehand. Several of our leading admirals have lately written their own memoirs, and those landsmen who take the trouble to read them will find that most of them had to do international work of importance, on their own responsibility, long before they reached the rank of commander-in-chief. On many occasions officers of the rank of captain have declared blockades and laid down the rules for them entirely on their own responsibility. On several occasions they have shown that they knew more of international law than colonial lawyers. The retired admirals of the present day were brought up among blockades and international questions from their boyhood. To have taken part in the blockades during the Russian War, to have watched the proceedings of both blockaders and blockade runners and of Southern cruisers while employed in protecting British interests during the Civil War from 1861 to 1865 was a far better education in practical international law than can be obtained by listening to theoretical lectures by inland lawyers.

Of these retired admirals I was a contemporary. At the age of 14, an age at which the international lawyers were making Latin verses with the aid of a "Gradus," or studying compulsory Greek, I was sent on board the *Duke of Wellington*, the *Dreadnaught* of the day, flagship in the Baltic, in obedience to signal, for the purpose of transcribing Admiral Dundas's orders for blockading part of the Baltic coasts. In 1857, at the age of 16, I was up the Canton River when some law court at Hong Kong endeavored to interfere with the proceedings of a captain of marines, who, while in com-

mand of Macao Fort, near Canton, had captured some junks. The admiral, Sir Michael Seymour, soon put that court into its proper place, and, acting on the maxim of *inter arma silent leges*, promptly proclaimed a blockade of the Canton River, and allowed no person to enter it without a naval permit. It was admitted by the Foreign Office that no mistake was made by any British naval officer during the Civil War in America, though action had to be taken in some hundreds of cases. Common sense, a practical knowledge of the necessities of the sea, combined with study of the law books on board their ships, carried them safely through. All our errors of judgment in that war were made by the Government and by lawyers, who did not understand war. Of the *Alabama* claims not one sixpence was ever paid in consequence of the mistake of a naval officer. They were all due to lawyers, who meddled with war, of which they knew nothing. Our greatest mistake—namely, permitting the escape of the *Alabama*—was due to the bungling of the Foreign Office and its legal advisers, neither of which departments, apparently, knew anything about the value of time in war. The ship was allowed to sail, while they wasted precious moments in consulting one another. One of the lawyers was ill and he had no understudy.

LORD SANDERSON. I beg the noble lord's pardon for interrupting him, but that was not the cause of the escape of the *Alabama*.

LORD ELLENBOROUGH. I have been lately reading it up in the library.

LORD SANDERSON. The noble lord may have been doing so, but I was employed in the arbitration and took part in the preparation of the case of the Government. The noble lord may take it from me that that was not the cause of the vessel's escape.

LORD ELLENBOROUGH. I am relying on what I read in the Blue Books last week.

Now I pass to what I was saying about the *Alabama*. It was known for weeks beforehand that the *Alabama* was being built. She was launched on the 15th of May, and did not sail until the 29th of July; yet the lawyers and the Foreign Office reserved their decision, just as if they had been sitting in an ordinary peaceful law court, until the time for action had passed. They ought to have read up their law books while the ship was being built, instead of waiting to do so until she was ready for sea.¹

¹ Sanderson's contention is correct. I was misled by M. Staempfli, one of the arbitrators, who in his summing up, under the heading of "Facts of the case," stated that on the 23rd of June Mr. Adams made his first representation to Lord Russell, and that on the 25th June Lord Russell transmitted this remonstrance to the law officers of the Crown. M. Staempfli appears to have applied the term "Law officers of the Crown" to a firm of Liverpool solicitors who were consulted in the matter. The Attorney General and the Solicitor General did not receive the papers until the 28th July. [Ellenborough.]

Other cases occurred in which the sailors were right and the lawyers wrong. The *Alabama* committed a prize, the *Tuscaloosa*, as a man-of-war. Admiral Sir Baldwin Walker thought that the *Alabama* had no right to do this, and that the *Tuscaloosa* ought to be seized. The Attorney-General at the Cape said, "No," and she was allowed to sail. Then the Home Government in England said that she ought to have been detained. On her return to the Cape she was arrested accordingly. Afterwards the Home Government said that as she had not been seized on the first occasion she ought to be released, which was done. After the war I met the Confederate officer (Lieut. Low) who had commanded the *Tuscaloosa*. The British officer who was sent to board her was the present Admiral Sir William Kennedy, who is one of those who has signed a petition against the ratification of the Declaration. Take again the case of the *Oreto*, a sister ship to the *Alabama*. She arrived at Nassau flying the British flag in April, 1862. The senior naval officer present, Commander McKillop, of the *Bulldog*, wished to place her where she could be under proper supervision, but the local attorney-general objected. When the *Bulldog* had sailed, Captain Hickley, of the *Greyhound*, became senior officer. He sent an officer on board the *Oreto* and proposed to send her to the commodore or commander-in-chief, on his own responsibility, but the Governor of Nassau and his colonial lawyers prevented him. We had to pay heavy damages afterwards. For on leaving Nassau she went to Mobile, where she was duly commissioned as a Confederate man-of-war under the name of the *Florida*. I met her afterwards at Bermuda. I recollect supplying one of her officers with refreshment of a fluid nature in the wardroom of H. M. S. *Shannon*, which may, or may not, have been a breach of neutrality on my part. The United States ship *Wachusett* also appeared at Bermuda while I was there in chase of the *Florida*. Later on she met the *Florida* at the neutral port of Bahia. Brazil being at that time a weak naval power the *Wachusett* ran alongside the *Florida* in the night and captured her. To prevent further complications or remonstrances the *Florida* was accidentally sunken on her way to the United States.

Now, the captain of the *Wachusett* achieved his object, as the *Florida* did not capture any more northern merchant ships. I mention this case to show how utterly naval officers disregard so-called international law when the interests of their country demand it, and their country is prepared to back them. We must expect similar cases to arise in future. But when in harbours belonging to powerful neutrals the captains of belligerent ships behave very differently. For instance, when the U. S. S. *Iroquois* met the *Sumter*, which was

a much weaker ship, at Martinique, she steamed up to within 50 yards of her, but did not dare to violate the neutrality of France. A similar case occurred in January and February, 1862, inside the Isle of Wight. When in the Solent the *Shannon* received orders to open fire on the *Tuscarora* if that vessel interfered with the Confederate cruiser *Nashville* and did not give her 24 hours start. I saw the *Nashville* steam out in broad daylight, close to both ships. It was my first watch that night—8 till 12. The *Tuscarora* had a large cabin port, and with my telescope I watched the American captain writing his despatches and consulting his law books until a late hour. I may add that the *Shannon* was a much larger vessel than the *Tuscarora*, and the *Tuscarora* was more powerful than the *Nashville*.

I mention these things to show that my contemporaries, the admirals on the retired list, had exceptional opportunities for learning more about international law as actually practised than the men in the street, to whom Mr. McKenna compared them. Is not being actually engaged in carrying on a blockade as a belligerent, or watching a blockade as a neutral to see that your country's interests are not injured, a better school of international law than poring over a number of cases of ancient prize court law, in which no mention is made of the strategy or the real reasons which caused a belligerent to seize a neutral ship? In some cases it is most important to seize a ship; in other cases seizure can have little effect on the war. Does Mr. McKenna suppose that admirals on being retired forget all that they have learnt, either in youth or middle age, either as neutrals or as belligerents? They do not drink the waters of Lethe and forget what they learnt in youth and middle age when they go on the retired list.

In considering the definition of the word "base" in article 34, it is as well to look up some of the precedents of the American Civil War. The Geneva court held that Melbourne was "a base of operations" in the case of the *Shenandoah*, because she had received coal and other supplies when at that port, and that Great Britain was therefore liable for her subsequent depredations. Sir Alexander Cockburn, the Lord Chief Justice, objected to this, and tried to get the court to accept the following definition of a "base of operations":

In naval warfare a base of operations would mean a port or waters from which a fleet, or a ship of war, may watch the enemy and sail forth to attack with the possibility of falling back to the fort or water in question for fresh supplies or shelter for the renewal of operations.

With Sir Alexander Cockburn's clearly worded opinion and the Geneva precedent before them, I am afraid that any international court, however constituted, would consider that every harbour in this island was a base. Sir Edward Grey, in answer to a question in an-

other place, has endeavoured to minimise the effect of this decision of the Geneva court and Sir Alexander Cockburn's opinion. But I do not think that his arguments would convince any jury of moderate intelligence or any man of legal training. They are scarcely likely to be accepted even by the poly-chromatic court that it is intended to call into existence. Why not give up the point at once and admit that it was overlooked when the treaty was drawn up?

It has been frequently asserted that the Declaration does not in any way affect the conversion of merchant ships into men-of-war on the high seas, that it leaves the position unaltered. Lord Desborough has in the course of this debate given reasons why that is not the case, and I shall not, therefore, trouble this House by repeating them. Is it not quite clear that if the international court decides that the capture of a neutral by one of these vessels is legal, that by so doing it will give a status to these ships which they have not had hitherto, and that the belligerent whose life is dependent on its commerce will be put in a worse position by such a decision. Mr. McKinnon Wood, Under-Secretary of State for Foreign Affairs, stated that the number of ships fast enough to pay to convert, in the mercantile marine of our opponents, can be counted on the fingers of one hand. Now with a foreign Government it is not a question of paying to convert or of making prize money. It is a question of stopping a large portion of British trade, and thereby compelling Britain to sue for peace. Recollect that during a war with us the greater number of our enemies' merchant ships would be laid up, unable to earn money by carrying cargo. They would therefore be cheap. Secondly, it is not so much a question of escaping when once sighted by one of our fast cruisers, or of getting alongside of our best mail steamers, but of catching our tramps, or rather of frightening them off the sea; therefore a ship much slower than our cruisers, and only 2 or 3 knots faster than our tramps, might succeed in destroying numbers of our cargo boats before being herself caught by a cruiser. The food supply of Great Britain is chiefly carried by slow boats.

Then I come to costs in belligerents' courts. One of the many blots in the constitution of the international court is that it cannot give costs in the national court of the belligerent. In our war with France the expenses incurred in our own prize courts frequently exceeded the value of the ship and cargo, so that an injured neutral might still be heavily out of pocket even if an international judgment was given in his favour, from having to pay law costs in the court from whose decision he had appealed. With regard to prize money, article 31 of the prize bill appears to me deserve more attention than it has yet received. By it no prize money is granted for the capture of an unarmed ship. This is a bit of patchwork.

I should have thought that the production of a naval prize bill would have been a suitable occasion for the issue of a complete scheme of new regulations for the distribution of prize money. One of the assertions made by some of those who wish property at sea to be more sacred than human life is that naval officers are opposed to the immunity of property afloat on the ground that they may lose prize money. Some of our admirals have served 30 years, and have not touched one penny of prize money. I myself may perhaps be considered one of the lucky ones, as I made about 12 pounds in about 19 years' service. At present I do not think that the chances of prize money enter into the calculations of a naval officer's pecuniary prospects, whether made by himself or by the man whom he hopes to make his father-in-law. It appears to me most unfair that the officers and ship's company of a cruiser that effects the bloodless capture of a ship like the *Lusitania*, carrying one or two guns only, should make fortunes, whereas the mangled survivors of a destroyer that has sunk a dreadnaught should get nothing. In the olden days there were perpetual quarrels between officers and complaints among the men about prize money. It would be advisable, before a war breaks out—before any captures are made to quarrel about—to issue a well-thought-out scheme for the distribution of prize money. In former days, and even at present, a large share goes to the captains of ships. The captain of a ship was, and I believe is still, solely responsible for seizure, and may be cast in damages that may ruin him. If he is an impecunious bachelor, he may choose to run risks that a man who has 20,000 pounds and a family to provide for would hesitate to undertake. For these reasons a large share of prize money was allotted to the captain as compensation for the risk that he ran. But surely some better method than this can be discovered for dealing with the responsibility of seizures.

I do not wish to waste the time of the House by repeating the powerful arguments that have been adduced by other noble lords. One of the chief faults of the Declaration and some of the conventions is that they ignore geography. I consider that in time of war we shall be more likely to succeed and retain the friendship of neutrals if we make the question of what belligerent rights we claim a matter of geography and of the higher strategy, instead of relying on the interpretation of fixed rules. Look at Italy. It is a matter of vital importance to her that no mines should be sunk on the track of her transports, and the warlike stores should not reach the Arabs. Such rights as are necessary to ensure this she sticks to, others she waives as not essential to her success. She made war suddenly, so as to be able to proclaim a blockade before arms could be imported

into Tripoli. As it was, she appears to have been a little late, as the *Derna* is said to have landed 10,000 stand of arms, which were distributed to the Arabs who have given so much trouble in the oasis. But she does not enforce all her belligerent rights either in the Adriatic or in the Aegean. Out of deference to other powers she has refrained from raising and arming the Albanians, though by so doing she would have given the Turks an infinity of trouble. If the Declaration is ratified, each power will in war make its own reservations and interpretations, and the Declaration as a whole will receive about the same amount of attention that was vouchsafed to The Hague Conferences in the cases of Bosnia, Morocco, and Tripoli.

As I have already said, one of the chief objections to the naval prize bill is that when we are fighting in real earnest, with our daily bread at stake, we shall be obliged to disregard the Declaration and some of the conventions, and that when we do so neutral powers will consider that we are doing them a grievous wrong, and that we shall irritate them more if, being bound by no treaty, we only insist on the minimum of belligerent rights, leaving others unused, just as Italy is doing now. As regards the question of the interference of this House with a treaty already made, it should be remembered that we are a democratic country and becoming still more so. In the United States the Cabinet and President cannot ratify treaties without the consent of the Senate. In Canada something similar occurs. The more democratic the times the more necessity there may be to have some check on the treaty-making power which is now so entirely a matter of prerogative exercised by the Prime Minister.

LORD REAY. My lords, with regard to the constitution of the international prize court, I may, perhaps, explain the position in which the British delegates found themselves at The Hague in the year 1907 at the second peace conference. At such a conference all powers have the same voting power. The smallest State there has the same influence as one of the great powers. The majority, therefore, at the peace conference was overwhelmingly composed of the smaller powers, and when the constitution of this international court came to be considered it was obvious that the claims of the smaller powers could not be overlooked. I may also point out that the smaller powers in many instances were the supporters of proposals made by the British delegates when they were opposed by the greater powers. It is, therefore, against our interest to exclude representatives of the smaller powers. Many of the smaller powers have very distinguished international jurists whose services have been in great request in arbitration proceedings. Switzerland has been mentioned. Switzerland certainly is not a maritime country, but I am quite sure that the representative whom Switzerland will send to

this international court will be a man of high distinction and perfectly impartial. The same thing applies to Belgium. Then the South American Republics have been mentioned. Some of the most distinguished members of The Hague conference came from the South American Republics, and a very eminent representative of one of the great powers at the peace conference expressed the opinion that the part played at the conference by the South American Republics had been to him a revelation.

I can also inform the House that a number of proposals were made with regard to the constitution of this court, but that the proposal which was ultimately adopted was the only one which met with the approval of the conference. Therefore you are in this position, that either you have to accept the court as it is here proposed or you have to abandon the idea of establishing such a court. There can be no doubt of the great advantage to us in securing an appeal from the foreign belligerent's prize court to a court mainly composed of neutrals and obtaining an interpretation of international law which will be binding on all the other powers. It certainly is an immense advantage as regards the Declaration of London that we are sure that food can never be defined otherwise than as conditional contraband; and by the abolition of the doctrine of continuous voyage you have this further advantage, that food supplies in neutral merchantmen can reach without any difficulty harbours close to our own coasts, and that therefore the duty of the navy in connection with those ships will be limited to the area between those neighboring neutral harbours and our own coasts.

The Declaration certainly is favourable to neutrals, and when we are neutral our great mercantile fleet will enjoy all the protection the Declaration gives. With regard to blockade, the Declaration has adopted the British view, which hitherto was not accepted. Instead of a restricted line in front of a port we shall have an area of operations, which will be greatly to the advantage of our blockading fleet. As to converted merchantmen, it should not be forgotten that under the convention the commander and the officers of the converted merchantmen must be taken from the navy of the country to which it belongs; therefore it will not have any attribute of a privateer, but will be assimilated to a man-of-war of the power which converts. With regard to the destruction of neutral vessels, it should not be overlooked that our fleet will have the same right of destroying neutral vessels which according to the Declaration will be given to other powers with limitations which have been inserted in the Declaration, and which seem to me to be of great importance.

The Declaration is the first step in the direction of the codification of international law. No doubt we have not obtained all that

we wished to obtain, and we could not expect to obtain it. Neither could we expect, when we enter into a conference of this kind, that other powers will accept the interpretation of international law which our courts have laid down. But I would urge on the House the great importance of not defeating this attempt, to come to an international understanding, and I would point out the deplorable effect which it will produce abroad if we at this hour refuse to ratify the Declaration which we have invited the other powers to elaborate, and which at the imperial conference has been accepted by the representatives of the dominions with the exception of Australia. If this House incurs the great responsibility of preventing ratification of this Declaration, our representatives at international conferences will find it more difficult to obtain the assent of other powers to proposals made by them. To establish such a precedent seems to me to weaken our influence as a great power.

LORD SANDERSON. My lords, I have felt reluctant to address your lordships upon a question upon which so much has been said and written, and which does not seem to me to be very well adapted for examination in parliamentary debate, but there are one or two points upon which it may be useful that I should say a few words from personal experience. I shall confine myself strictly to the question, and shall endeavour to be brief. In the first place, as regards the composition of the international prize court, about which the noble lord who has just spoken and previous speakers have said a good deal, I should like to mention that in the correspondence with the German Government which was laid before Parliament as to the seizure of German mail vessels in the South African War, Lord Salisbury quoted as a convincing argument the opinion of the eminent German jurist Professor Bluntschli. When that despatch was drafted there was some question as to how Professor Bluntschli should be described. He was really a Swiss and had been a member of the Swiss Government in revolutionary times; after the counter-revolution he retired to Munich and passed the rest of his life as a professor there and afterwards at Heidelberg. I need scarcely remind your lordships that neither the Grand Duchy of Baden nor Bavaria is a maritime State, yet Professor Bluntschli's views on maritime international law are everywhere received with great respect. Then there is another publicist—Monsieur Calvo—whose treatise on international law is received with respect everywhere as a great authority on modern practice. Monsieur Calvo was an Argentine diplomatist, and I venture to assure your lordships that if you had to carry on a controversial correspondence with any of these minor States, it will not be any deficiency of legal knowledge or ability that you will have discovered in the course of the controversy.

My lords, as regards other provisions of the convention it would be better that some one with legal knowledge should defend them. But I notice that two noble lords who have spoken to-night, however much they may have examined it, have not yet succeeded in finding that the convention, in article VIII, gives to the tribunal the right of awarding damages. I will turn to another point. It has been objected that this convention will invalidate or destroy the right of neutrals to protest against improper action on the part of a belligerent and to use diplomatic pressure for its prevention. I have been quite unable to discover the foundation for that assertion. If you look at the correspondence to which I have already alluded on the subject of the seizure of German mail steamers, you will find that we answered the German Government by stating that the seizure of the *Bundesrath* would be dealt with by the British prize court. But the objection made by Germany was that it should not go before a prize court at all, and if at that time the Declaration of London and the international prize court had both been in existence that contention would not have been in the least degree altered, but, on the contrary, strengthened. The German Government would have said, "We do not consider that the matter ought to go to a prize court at all. We contend that by the proper interpretation of the Declaration of London the vessel is not liable to seizure; by article 67 of that Declaration you are bound to give proper instructions to your naval officers, and you are bound to see that the Declaration is carried out, and we insist upon it that those instructions should be given." Therefore they would have had stronger grounds for their protest than they had, for I did not think their protest was absolutely well founded at the time.

Then it is said, "Yes, neutrals may be able to protest; but the Declaration is vaguely worded." But however vague it may be, the present state of international law on these contested points is still vaguer and more unsatisfactory. I should like to give your lordships an example. It has been made a reproach against the Government that they have not succeeded in getting any prohibition of the commissioning of merchant vessels as ships of war on the high seas. From the language employed one would suppose that the British nation had been protesting against this vigorously and consistently, I will not say from the time of Noah's ark, because I do not want to exaggerate, but at all events from the time of the maritime Declaration of Paris abolishing privateering. What are the facts? The *Alabama* escaped from England and was commissioned and received her armament and crew either on the high seas or on the extreme verge of Portuguese territorial waters near the Azores. She went out and captured a large number of prizes, all of them United States vessels, and she sank them with the exception of one which she com-

missioned on the high seas as a tender. Did we denounce her as a pirate? Did we say it was a resort to barbarism, or did we refuse her admission to our ports? Not at all. We received her and treated her as a ship of war, and after some hesitation we decided that her prize was to be received as a ship of war also; and when I was at Geneva during the *Alabama* arbitration we were employed, under the direction of Sir Roundell Palmer, the first Lord Selborne, in arguing for all we were worth that it was the only course we could take, and that we were bound to accept her as a properly commissioned vessel of war. The tribunal thought otherwise. The British representatives alone dissented. The rest of the tribunal held that we ought not to have received her into our ports, or given her the immunities of a ship of war when she had obtained that position by the breach of our neutrality. As we paid a million and a half for the doctrine we had acted on, we have got a perfect right to alter it now, and no one, I think, can throw it in our teeth that we thought otherwise then.

But this is what I wanted to call your lordships' attention to. We have two principal English textbooks on international law. One is the work of the late Mr. Hall, and is published by the Clarendon Press at Oxford. The other is a work by Professor Westlake, which has recently been published by the University Press at Cambridge. Mr. Hall expresses his opinion that the decision of the tribunal was unfortunate and wrong, and Professor Westlake says that there can be scarcely any doubt that the tribunal were perfectly right. In those circumstances I really do not know how we are going to argue that there is any clear and definite rule on this point founded on international law, nor do I think we ourselves are in the best position for obtaining a confirmation of the doctrine that the commissioning of vessels on the high seas is to be universally condemned. I think that other powers if we appeal to them may very well say, "It really does not matter to you, you have a huge navy and ports all over the world, and if you want to commission merchant ships you can do it with the greatest ease; why should you expect that we who have not got these advantages should all unite together for your convenience in condemning the practice?" It is quite possible these other nations may in time come to the conclusion that upon the whole it would be better for them also that the practice should be condemned, but I do not think that the argument comes extremely well from us.

Then, finally, my lords, I should like to say something about the international position in which this country would be placed if the Government is prevented by this House from being a party to this arrangement. There can be no doubt whatever that we took a considerable part in proposing and advocating the convention for the international prize court. Subsequently we ourselves came forward

and invited the conference to meet here to draw up a code of law by which that tribunal should be guided. According to the usual practice the senior British plenipotentiary presided over the conference, and the British plenipotentiaries had the great advantage of being in direct communication with the Cabinet and with the expert advisers of the Government. Under those circumstances this arrangement was made and signed. Since then it has been accepted, and its ratification has been approved by the imperial conference, and it has been equally accepted by the House of Commons. It was concluded under the sanction of one Board of Admiralty, and it has since been acquiesced in, as far as I know, by two other Boards of Admiralty. Under those circumstances if this House interferes to stop any further progress we shall be placed, it appears to me, before other countries in a very damaging and disadvantageous position. The discussion of the Declaration of London has done one thing, at all events. It has awakened the country to the risks of a great naval war. But there seems to be a sort of impression that if we get rid of the Declaration we should get rid of this danger also. That is a delusion. The risks are there, they are the results of our circumstances, and they will remain.

But you can not really get rid of the Declaration of London. You can refuse to be a party to it now, but the Declaration of London will still remain on record as what is really the foundation of international law, a general consensus of the Government represented. You can put yourselves in a position in which you will get no advantage from it. But you cannot put yourselves in a position in which you will get any support when it is urged against you. You may say, "This and that practice was, no doubt, sanctioned by the Declaration of London, but we have refused to ratify the Declaration of London." But other countries will reply, "After all it represents the general opinion, and we are not going to support the reverse." I cannot help feeling, my lords—I do not wish to use a harsh term—that the Government might have adopted an attitude a little less arrogant towards the opposition that has been aroused in the country by the Declaration. It is in my opinion ill-formed, but it is genuine and deserves consideration. If the Government had come forward and invited some kind of discussion, I believe that much of this trouble might have been avoided. But I still can not see that we shall gain anything by tying the hands of the Government and preventing them from taking part in an arrangement which is undoubtedly in many respects a step in advance.

LORD ALVERSTONE. My lords, I am sure your lordships will have heard with the greatest interest the speech of Lord Sanderson, who speaks with so much authority from his long connection with the Foreign Office, and one is extremely glad to think that in such mat-

ters he can assist your lordships' House. I should not have intervened in this debate at all but for the pointed allusion made to me by the noble earl opposite (Earl Beauchamp), who said, in moving the second reading of this bill that I had made a statement with regard to international law with which he did not agree. It may be that the noble earl is only stating his own opinion on the matter, and I will endeavour to answer it with all the respect I can. But I think before he says that what I have said was not agreed with I am entitled to know whether he means agreed with by lawyers or experts in the matter, or only not agreed with as a matter of opinion; because I shall venture to repeat again what I said on the last occasion, and I will attempt, if I can, to justify what I said as bearing upon the question now before your lordships' House.

I say again that when we are considering whether what we get under this bill, speaking of the tribunal and the law to be administered by the tribunal, is to this country's advantage, we ought to consider what we are losing. I will try to repeat what I said on the last occasion. I cannot quote my words, but the noble earl has them. This is wherein he differs from me, I understand. I said that the law of England has been respected and adopted, and has formed the foundation of international law in all the civilized countries of the world. I do not, of course, pretend to say I quote the words exactly, but that is what I said, and that is what I understand the noble earl does not agree with. As I have said, if the noble earl says I am wrong I should have been glad to argue it. If he states that he relies on somebody else, then I venture to say with full responsibility that I was absolutely right. The prize law of the civilized world has been built up by the courts of this country, and subsequently followed by the courts of America, particularly the United States, and as my noble and learned friend Lord Halsbury said to-night, the judgments of Lord Stowell and Dr. Lushington, and of all the distinguished judges of prize courts, have been treated as forming the foundation of the principles of international law. When the noble earl says somebody, I do not know who, does not agree in that, I can only say I have read and studied both the works which Lord Sanderson referred to, and many others, over and over again, and works by German lawyers and lawyers of the United States, and many of the judgments which the great Chief Justice Marshall delivered in prize courts, and it will be found that the decisions to which Lord Halsbury has referred and the decisions to which I have referred, and the rest of these opinions, are treated by these writers as being the foundation of legal principles in prize law. I am quite sure my noble and learned friend on the woolsack will not dispute that for a moment.

The LORD CHANCELLOR. Of course, everybody knows that English maritime law is the foundation of international prize law.

LORD ALVERSTONE. Quite so. I am not discussing, and I do not mean to discuss, any point I referred to on the last occasion. But I say we have got a system of jurisprudence in prize cases based upon 200 years of English decisions, followed by the prize courts in the United States and respected by all civilized nations. Now that is what we may be giving away. I think we are giving that up, but that is a matter, again, of opinion. What are we going to get for it? Here I come to the question which my noble and learned friend on the woolsack did not deal with so fully as I should have liked. We are going to get a court in which the British judge is to have one voice out of 15. They are all to be equal, and I quite believe, as Lord Sanderson has stated, that some of these nations will produce a very respectable international lawyer, though he might only be a professor or one who had only studied international law from the book point of view. But, after all said and done, we have no recognition in this so-called code—and with all deference to Lord Reay I do not think it can be called a code—of any of the principles of international law as applied in prize cases to which respect has been given in our courts. On the contrary, as I understand—I am not going to enter into this at length—there is applied some sort of rule of what the tribunal think to be just and right, and we are really abandoning—it may be the price is worth it—the only rights we have of having an adjudication in our own courts. We are abandoning there the principles on which the cases have been decided.

I entirely agree with my noble and learned friend on the woolsack that an appeal would be a matter of very great importance and value. I said on the last occasion when I spoke that I would sooner argue a point of international law—and I do not speak without experience in the matter—on the construction of some recognized and received code than have to cite a number of authorities in order to prove a principle first. It is clear that we are going to get something, but, at any rate, we ought to see what we are going to lose, and personally I am not satisfied with leaving it absolutely at large to such a tribunal—a tribunal upon which, as I have said, the British feeling will be only represented by one-fifteenth. I agree with my noble and learned friend on the woolsack that the actual number may be not excessive, and I think he is quite right in what he said as to the *Franconia*, but still the quality of the tribunal is better than the quantity, and I should be more satisfied if I thought this tribunal would really represent, and be representative of, the opinion of lawyers of experience in international law. I do not myself like the hazardous position of the court, and the absolute freedom with regard to previous existing authorities.

Nobody can have failed to be struck by the words of the able and eloquent speech of the noble and learned earl on the Woolsack. I am not going to argue with him upon all the various questions which he raised. I said what I had to say on the last occasion, and I will not repeat it. I will only say that while I certainly agree with the noble and learned earl on certain points, there are a good many other points that he did not think it necessary to touch upon. But when he says we ought not to refuse to pass this bill at even the greatest cost because it is exactly following out what has been developed by this conference in London, I think he rather gives the go-by to the actual position. This is the only opportunity we have had of dealing with the provisions of the bill, and it does seem to me that if some of us feel, either strongly or weakly, as the case may be, that the bill is not to the advantage of the country, it is our duty to state our reasons and to put forward arguments, which can be answered or not, why we think the price we are receiving for what we are giving up is inadequate.

In that connection there is one matter which seems to me not to be quite sufficiently appreciated by either my noble friend or His Majesty's Government, and I hope His Majesty's Government will think it fair to give me some little information on the subject. We have never been told how many other nations, parties to this convention, have ratified the convention or agreement, and I think before Great Britain is asked to ratify we ought to know whether the other nations, great or small, are prepared to ratify it. We ought to know whether it is true, as the noble and learned earl on the Woolsack said, that if we reject this bill we are going to throw everything into chaos. It does seem to me that if our position is that we are really being asked to pull the chestnuts out of the fire, being the first great country to give effect to this, then other considerations may arise. I do not know what the United States will do. I have no idea, but it seems to me that those considerations are of some importance.

I will not detain your lordships except to say a word on one other point. I am bound to say that I think the offer made by His Majesty's Government, if it had been incorporated in the bill, would require to be carefully considered. I understood the Government were ready to give an undertaking that they would not either enter into the Declaration or make any arrangement until they were satisfied on two points—one being the point with regard to how far the report was going to be treated as part of the convention. I must point out again that there were two or three matters in which the convention was inconsistent, and therefore to treat it in that way would not solve the difficulty. Then we are entitled to know what safeguard we have for an undertaking which, of course, will be honourably performed by the present Government; but when we are

dealing with an act of Parliament its influence will extend beyond the life of that Parliament. It seems to me that if that sort of suggestion is going to be made it should be embodied in the bill and put in a shape so that we can judge of it; otherwise we are trusting the executive, not knowing exactly what they mean, and only having a promise that they will not ratify until there has been an arrangement made with regard to the report and an understanding as to the meaning of the word "base."

I am not going again, as I have said, to argue what I tried to point out on the last occasion as to the dangers that arise under the base clause, as I will call it, of the Declaration. But I say this House should have an opportunity of judging of whether or not what is going to be agreed to would be satisfactory. I am quite aware that the noble and learned earl on the Woolsack said that Parliament was to be satisfied, but it does seem to me that it is not asking too much that there should be a clause put in the bill, and not a mere understanding which may give rise to discussions hereafter. That is all I have to say with regard to this question. I am most unwilling that any difficulty should be created by the refusal of this country to ratify. I said on the last occasion, and I repeat it, that I fully recognise that it is a grave responsibility to render for the time being abortive the proceedings that have taken place. But when there are paramount interests at stake, when the security of the Empire and the continuance of the food supplies of this country may be seriously impaired, we ought not to hesitate to decline to give our consent, whatever the consequences may be.

LORD COURTNEY OF PENWITH. My lords, I venture to intrude on your notice for a few moments in consequence of the remarks which have been just addressed to us with so much authority by the Lord Chief Justice. My noble and learned friend is very much concerned lest the great fabric of international law which has been established mainly on the foundations of the decisions of the English courts should be treated as of no account, and we are going to start afresh in the evolution of law, leaving it to this new tribunal to declare what they think to be the law on all points which may arise in disputes between nations. My lords, I have not so understood the Declaration of London, nor the report which accompanies that Declaration. According to what I understand the report to be, the decisions of international prize courts in the future are to follow the received doctrines of international law. That is to say, they are to follow on the lines which have been laid down by our own great judges, and which, as my noble and learned friend said, have been adopted by the courts and the Governments of other nations. They are to follow upon these lines, and it is only where the doctrine is left obscure, it is only where it wants further devel-

opment, it is only where it is in dispute—it is in these cases and in these cases only that the court of appeals is to decide what it thinks right in pursuance of what has been hitherto adopted and is in accordance with equity and justice.

Now if I am right in that contention, the concern of my noble and learned friend is misplaced. The great body of international law which we have inherited is kept. It is in its development only that we allow for the action of the new court of appeal, and in that they will not have a free hand, because in that development they will be bound to pay respect to what has gone before. I do not wish to prolong this debate or repeat what I said before with respect to the Declaration of London and the interpretation of the terms therein, but I want to call particular attention to the point last laid down by the Lord Chief Justice. He said that if the offer made by the noble earl, Lord Beauchamp, and repeated by my noble and learned friend on the Woolsack, had been made beforehand, if it could be made binding, we might have passed the bill, for a great deal of consideration was due to it, and much weight would have to be attributed to it. I hope I do not misinterpret my noble and learned friend. He attributed the utmost weight to the offer made by Earl Beauchamp and repeated by the Lord Chancellor being put in a formal binding fashion. It was made firm enough, he admitted, so far as the present executive went, and if it could be put in a formal and binding fashion which should bind not only them but possible successors, he said he might be of a different temper. If we could secure that interpretation, or, rather, agreement in interpretation, with the other powers for which the Government looked and upon which alone they would ratify the Declaration of London, if we could make that secure, then it was said you should hesitate to refuse to pass the second reading of this bill.

My lords, I ask you this question. Does not the position taken up by my noble and learned friend the Lord Chief Justice point to this, that you should be allowed to read the bill a second time and consider whether it is not possible in committee to put in a provision reserving the ratification of the treaty, or what comes to the same thing, reserving the order in council which shall give effect to the part of the bill which is in controversy, until an agreement has been arrived at, which should be laid before Parliament and be accepted by both Houses, upon the disputed point of interpretation with which alone we are concerned? That is the point. The Government say they will not ratify until they can obtain that agreement and submit it to Parliament, Parliament being open to reject it, and then the regulation will not take place. My noble and learned friend the Lord Chief Justice says that is not enough; it should be put into

the bill. Why should it not be put into the bill? It is a difficult and delicate matter of draftsmanship. But do not decide that at this moment. Do not make it impossible, by refusing to read the bill a second time, to have other opportunities of considering this. Assent to the second reading of the bill, and then in a definite form in the act of Parliament itself reserve the order in council which gives effect to this disputed part of the bill until there is an agreement arrived at and submitted to Parliament and acquiesced in as regards the three matters which are in dispute.

We are all satisfied of this. It is a very grave matter to refuse to make possible at this moment the ratification of the Declaration of London. It is an international act; it is not a thing concerning only the present position of municipal law, but a matter concerning the progress of international law and the authority of international conventions and the respect to be given to agreements with other powers. It is important that this should not come to naught if it can be preserved. I have pointed out to your lordships the way by which, while regarding what has been said by the Lord Chief Justice, the thing may be preserved, and how you may, when reading this bill a second time, secure its benefit and preserve that authority over the interpretation of the Declaration of London in the act of Parliament itself which the Lord Chief Justice desiderates. By so doing you may preserve the Declaration of London from coming to a miserable end, an end which we should all deplore.

THE EARL OF DESART. My lords, the Declaration of London has already on one occasion been fully discussed in your lordships' House, and the only point for consideration, and the issue on the bill on the second reading to-night, is the new international prize court. Naturally, therefore, many of the more weighty criticisms to-night have been directed to the constitution of that court and the functions to be performed by it, and it has been assumed, and probably quite rightly assumed, that unless the creation of that court is carried through the Declaration of London will probably not come into force. I know nothing of the intentions of the Government on this point, but I think it is probably assumed that the two are interdependent. Now, my lords, though I had personally nothing to do with the forming of the scheme for the creation of the international court, I have naturally, in the course of my duties in connection with the naval conference which led to the preparation of the document known as the Declaration of London, had to consider its provisions over and over again, and having been so closely connected with all the proceedings I thought I should not allow this debate to close without saying one or two words to indicate the line on which some questions that have been the subject of controversy in the country and in this House and in another place should in my judgment proceed. I will

indicate my view of the effect they really have, and whether they injure or improve our position. I have myself a very clear opinion on the point, but I do not propose to put my opinion in the way of advocacy, because I think in my position, especially on the issue before the House to-night, I should limit myself, so far as possible, to an explanation of the manner in which these things strike me and have struck me.

Before The Hague Conference and after it, and during the naval conferences and during the discussion which led to the Declaration of London, I have tried to consider every point that has arisen, not as a jurist purely. I have very little claim to be a jurist, and certainly none as a sailor; though I had the assistance of the most distinguished lawyers and sailors who were in constant touch with the Admiralty. But I have tried to see practically how under existing conditions things work, and I have endeavoured to form an opinion as to how they would work if the Declaration were ratified and in force. It is only from that point of view that I wish to put before your lordships' House some considerations of the subjects which have been mainly the subject of controversy. I do not think I need detain you long, because, after all, they have been fully discussed. One knows where the points of objection are, and they can be brought together without much difficulty.

First of all, much has been said to-night, and I feel some diffidence in adding anything to it, on the constitution of the international prize court. Now I suppose there is no real difference of opinion that it is not the ideal court, and not the court one would have created if one had had a free hand; but, as my noble friend Lord Reay explained, at The Hague Conference it was impossible to have a free hand. You had representatives of all the powers assembled there in conference to take part in it, and you were endeavouring to create an international court which should be acceptable to all and accepted by all. You could not under those circumstances altogether exclude the smaller powers; and on this point I may say that I think they have a good case for being included. It must be borne in mind that this court is a court to operate between the belligerent and the neutral and not between the belligerent and the belligerent. As to belligerents *inter se* it has no effect. It is a court merely between the belligerent and the neutral, and although many of these powers are not naval powers and some are not maritime powers, there is hardly, I suppose, any power in the world, however small, that has not an interest in the neutral carriage of goods by sea. I cannot imagine that there can be any controversy on that. Therefore, though their interests may be relatively small, you could not say they had no interests at all. Having regard to these difficul-

ties—it is not for me to praise or blame anybody about it—I think perhaps the outcome was nearly as good as you could expect. You have always the eight great powers, and even if the court sat with its full numbers, which I suppose would not very often happen, you would always have a majority of the great powers, and as the court is the judge between belligerents and neutrals, there is the advantage, if it be an advantage, that the court must obviously have a large majority, in any particular case that will be tried, who will be neutrals.

My noble friend Lord Selborne, I was glad to hear, said at the beginning of his remarks that he had no objection in principle to the creation of an international court of appeal. But I think I am right—I hope he will correct me if I am not—that at a later stage of his speech he gave us an argument against it the possibility of our decisions which we thought right being reversed by that court, and that we might have to execute a judgment of the international court opposed to our own views of law and justice. You must have, if you are to have any international court of law at all, that liability as a consequence if the international court is to be independent at all.

The EARL OF SELBORNE. I only mentioned that in connection with the conversion of merchantmen on the high seas.

The EARL OF DESART. I beg the noble earl's pardon if I have added anything to what he said, but that was my impression. There is no doubt it has been used as an argument a great deal; and if you press that argument, how can you possibly at any future time have any international court at all? Any independent court may decide against you. Therefore on the whole I think the international court is the best we could get at The Hague. I do not wish to prophesy, but it seems to me nearly as good as any court we are likely to get, and if on its composition it is to be rejected I think the prospect of any international court of appeal will fade very far away.

I have assumed that it was advantageous that there should be such a court, because I do think this—and I have tried to compare it with the system that now prevails—what concerns us, as neutrals, are the decisions of belligerent courts and not the decisions of our own courts. It was clearly illustrated in the last war how very greatly we may suffer under these decisions, and how very difficult it is to get any redress unless you are prepared, which is very seldom the case, to appeal to the arbitrament of force. I remember very well the noble earl on the last occasion when this matter was before this House saying that I had rather overlooked the pressure that might be brought by neutrals to bear on a belligerent who acted in excess of what was right or proper, and arbitrarily. But I did not forget

it, though I did not mention it. I think it is not really a thing you can rely on. I quite agree that it is necessary for belligerents, especially belligerents equally matched, to have regard to neutrals. It is a matter of degree; but I think it would be utterly unsafe to rely on the intervention of neutrals. In the first place, the injury to any particular neutral or to his trade is very seldom such as to lead him to risk the awful disturbance of war. In the second place, with two exceptions I think hardly any large carriers who would be likely to have ships seized are powers with great naval force behind them. In the third place, the danger of threats of war is that you bring on the field allies, known or unknown sometimes. If you once threaten war you do not know and can not know where it is going to end, and no prudent Government lightly embarks on that. You make your protest; sometimes you succeed, and sometimes not; but as happened in the Russian war, if you do not succeed, it is generally wiser to cut your loss.

I think the object of both the international prize court and the Declaration of London was to produce equality, so that we could, without sacrificing any principles which were vital or were important to us, place ourselves on equal terms, as a matter of maritime law, with our possible adversaries; and what I think and what I contend is that in substance we have done that. At the present moment we are under considerable disadvantage in many ways. I pay all deference to anything my noble and learned friend the Lord Chief Justice says, and if I criticise him I do it with great trepidation. I agree that the prize law of England has found its way into the textbooks of nearly every country. You would find many jurists, though not all, who would say that is so; but we have to deal with things as they are. Not only did we find in the Russo-Japanese War that our principles were not applied, but when we invited the powers coming to the naval conference to send in advance their views on the subjects under discussion we found very serious divergences. Such were the rules they intended to apply in any wars in which they were engaged. That is the actual law we had to deal with. Those were the doctrines which they considered applied at that moment. The views were very divergent, and one object was to obtain something like equality.

The points are rather difficult to deal with separately because they overlap. I take first, for convenience, the subject of the destruction of neutral ships, and I think there has been a great deal of misconception on this point. It has been stated freely, certainly in public controversy in the newspapers and I think in Parliament, that our rule and our practice is that under no circumstances must a neutral ship be destroyed, but that in all circumstances she must,

if she can not be brought into the prize court, be allowed to go free. Now, my lords, I do not find that anywhere as being subject to no exception. I quite agree that at The Hague our delegates were instructed to contend for that, and indeed we at the naval conference were instructed to contend for that; and extremely difficult we found it, because it was quite clear not only that there was nothing to support it beyond the general proposition as to neutral ships which everybody agreed on, but we found we had destroyed ships, and we found that Sir W. Scott had said this, that no doubt you ought not, as a matter of law, to destroy a neutral ship, but if the service of your country or its interests demand that you should destroy it, then in that case you must compensate the neutral. I have all the cases here, though I do not quote them; but that is the substance of them.

Now that is not the principle on which many foreign countries act, and we are always in this difficulty, that our prize courts and those of the United States are courts manned by judges who act quite independently of the Executive, and their decisions have to be accepted by the Executive. That is not the case with many foreign countries. Rules are made sometimes at the beginning of each war and they are approved as prize rules for that war, and they will be so administered. Therefore while our opponents lay down for themselves the conditions under which they would deal with neutral ships, we are bound by our courts as to the principles on which we deal with neutral ships. That is a matter on which I think it was desirable to find the remedy of equal law administered in the same way by all prize courts, and, failing the proper administration of that law, some tribunal more independent than a belligerent court to which we could appeal. In that view it was felt that, however broad the terms of law and equity and justice were in the convention of The Hague, they were not sufficiently clear, and it was for that purpose that these rules in the Declaration of London were made, and it was hoped they would meet with acceptance. It has not altogether so turned out, but I think there has been a good deal of misconception.

I would point out, on the question of destruction, that if we are to put forward our full contention that we can never destroy, we have the whole world against us. It is quite true that the United States and Japan expressed the pious wish that our proposal might be adopted. By the United States War Code of 1900, and in the Japanese Prize Rules of 1904 destruction is admissible, and, as I have already pointed out, I think we have no right to say that we do not admit it under conceivable and exceptional circumstances. Now the question is what are those circumstances to be. That is an extremely difficult thing to arrive at. We have had some experience of the

views of Russia on that point. They destroyed altogether in the war six ships, of which four were British, one Danish, and one German. We got compensation in some cases, but not on the ground of destruction, that was not admitted at all. There was no compensation whatever for destruction, and it was not even a matter to be dealt with in the prize court. I think it is extremely instructive in that connection, and it bears on that question to read a short extract from the judgment of the Russian prize court in the case of the *Knight Commander*. This is on the question of destroying a vessel and of what is the liability. The court said:

The question of the regularity of sinking a vessel according to the exact interpretation of article 58 of the laws relating to prizes is not one that is subject to the consideration of prize courts. Whether the extraordinary circumstances observed by the naval commander in the case, and which incited him to sink the vessel, were sufficient or not is a matter only for the superior officer and not for the prize court. The task of prize courts is to recognise a prize—namely, whether the capture is legal or illegal; or, in other words, to confirm the right of capture or to refuse such confirmation.

It is quite clear that no such rule would be recognised by our courts. The whole matter would come before the prize court, and if Lord Stowell is followed we should have in all cases to pay the neutral.

Now, what does the Declaration of London do? We first obtained the acceptance of the general principle and it was admitted that a neutral should not be destroyed save in exceptional circumstances as a general principle, and we endeavoured to obtain some agreement as to the circumstances under which she might be destroyed. We did not get all we wanted, and it was not likely we should, but we did obtain this. They are not quite the words which Lord Selborne read:

As an exception a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

It is quite impossible that there should not be circumstances in which a neutral ship might have to be destroyed. There might be occasions on which a naval commander by not doing so would betray his country. I will give two instances, because I think they illustrate the idea and purport of these rules. I am putting extreme cases, I quite admit, but one is entitled to do that. Suppose an enemy's fleet was near at hand and a neutral ship loaded with things they required was about to pass, and there was an action imminent and no men to spare. If that ship was allowed to go on it would give the very things they wanted to the other side; therefore it is clear that that ship, if she could not be disposed of in any other way, must be sunk. The illustration on the other point I wish to put is a

plan involving a surprise or raid. When you come to a neutral ship bound either to such a port as is to be attacked or to a place in its proximity, you could not let her go on, because your whole plan would be done for. You would have to keep her and provide for her crew, and, if you could not do that, you must dispose of her as best you could under the circumstances. In that case ought that ship to be allowed to go on? The words of the Declaration are directly applicable to such cases and the ships may be destroyed. But these words might be abused. If they are abused, what is your remedy now?—the enemy's prize court. Whether the international prize court is ideally constituted or not, for purposes of that kind it is better that it should decide on the legitimacy of the act of destruction.

Then there is the other feature which I indicated in the earlier part of my observations. At any rate we should be on even terms with our opponents if the Declaration is ratified; but now they will destroy us and we shall get no compensation, whereas if we destroy them we shall always have to pay compensation. Then I may also point out that the deterrents are very considerable as regards payment of compensation. The provision is that you compensate in all cases unless you show to the international prize court that the destruction was justified. You do not inquire whether there was contraband or anything else. The court inquires whether the ship was liable to destruction, and if she was not you then get compensated. I do not think I need, having regard to the proposal made by the Government, deal at any length with the question of food supply. But I should like to say that I think neither the words "base" nor "enemy" nor any words to which exception has been taken could possibly, having regard to the provision as to conditional and absolute contraband and the obvious meaning of "base," be read as those who feel grave apprehensions on the subject have read them. I hold that opinion very strongly, but it is not necessary to go into detail on that. But I do say this, that it is a valuable thing to have got the admission that food under no circumstances is to be absolute contraband, because I do not think it really can be disputed that there is now no general rule against it. We ourselves have really no definite general rule against it. Certainly France puts it definitely that she has not, and Russia has not, and Japan in the late war condemned food which there was no evidence was going to the enemy's forces. There is really no such general rule. I do not think anybody can prophesy what differences might arise. It is a question of degree and of circumstances. I was reading a book of Mr. Arthur Cohen's lately, in which he expressed in the warmest language his gratification at our being relieved of what he described as a very great peril.

I also think the Declaration may claim something from the free list. It covers nearly all the raw material we have, and as long as it is possible that they could be treated as contraband we are not certain as to what might happen, but this provision as to the free list gives them absolute certainty. On the provision as to continuous voyage I do not think I need say very much to your lordships. That is not really an English principle at all, though I think it would probably be adopted as such if the case arose now. It is an American principle really, and I do not think there is any case in our prize courts in which it has been adopted. But as regards continuous voyage for conditional contraband it really is of no service, because if goods which are not ear-marked in any way for the service of war go to a neutral consignee and there is nothing to show they are going to the enemy or that they are going to be used for war, there is no conceivable case in which you could ever stop them, and I do not think it was any sacrifice at all, and that it is technically and strictly accurate to state that what we have done is a gain as regards continuous voyage for absolute contraband.

I come to the question of the conversion of merchant ships at sea. There I think, on the whole, if there is a balance of opinion—and it is a very difficult question—we stand to gain by the international prize court. I am sure I am right in saying that there is absolutely no proposition, either generally accepted or otherwise, that prohibits the conversion of merchant ships at sea. Conversion of merchant ships in national ports is accepted by all. The conversion of merchant ships in foreign ports or territorial waters is rejected by all; it is only on the point of conversion at sea that this divergence or controversy arises. There is great difference of opinion about it, and so many take our view wholly or partially that I cling to the hope that if we take a step forward by a ratification of the Declaration in due process of time some agreement on this subject may also be found. I indulge the more in the hope because, on thinking the matter over very carefully, I doubt whether the advantage of conversion of merchant ships at sea would be commensurate with the loss which the converting power would inevitably sustain in the long run. This is really a conflict of interests. It is said “You are going to convert; there is no question of policy; but you want to make a rule by which you shall be the only nation who can convert, because you have ports all over the world, and we who have no ports are precluded from converting at all.” It is a conflict of interests; and when in the absence of any rule of international law you find conflict of interests it is very difficult to see how, unless some other factor comes in, you can obtain any measure of agreement.

There are two views. One is the view that as you have complete control by municipal law over your own ships, disciplinary and

criminal, therefore in consequence you have a right to convert your ships anywhere, except where your jurisdiction conflicts with that of some other power. On the other hand, it is stated that this is importing a new danger, and importing a thing that is quite inconsistent with the ideas of modern war, and importing perils that neutrals ought not to undergo. It was all fully discussed at great length at The Hague but without much result, though the division of powers on this subject is very considerable. We had on our side the United States, Spain, and Japan; Russia, Germany, and France were on the other side, while Italy and Austria were also on the other side while endeavoring to find a qualification to mitigate the danger. Thus the great naval powers are divided in opinion, and as nearly all the smaller powers' interests would be neutrals, the probabilities would seem to be rather in favour of a decision for than against our view. But what would be really the risk we would run? As a matter of law it is that there should be a decision of the court condemning a neutral that was so captured. Of course we must run that risk, and you would have to run it in the case of any court you go to. At the present moment you are quite certain that such a ship would be condemned in the courts that she would go to in the countries I have named. That is a certainty. But in the other way you have a chance. Therefore I do think that on the whole you would gain even in that respect by the international court.

I want your lordships to consider this. I have considered it a great deal, and I am very anxious about it. I do not think that the belligerent peril is a very serious one. If we have not sufficient cruisers we can convert at our ease in our own ports all over the world. You can have three or four ships to any one of any other of the powers suitable for that purpose. We ought to know, and I am told we do know, practically every ship of other countries that is capable of conversion. I think we should know where those ships were, and we ought to be able to shadow them. They would have to take their coal in at neutral ports and they must coal up full at first. They would not have their ordinary cargo or passengers, and I think if that were the case, unless we were very ill-served at the neutral port where she was, we should call attention to convention 18 providing that a neutral Government is bound to employ the means at its disposal to prevent the fitting out of a vessel which she has reason to believe cruises or is engaged in hostile operations against a power with which that Government is at peace. It is also bound to display the same vigilance in order to prevent the departure from its jurisdiction of any vessel destined for use in war. I think on that representation the neutral power would take the safer course and say they must make inquiries, and in order that the ship should be allowed to go it would be necessary for the

other belligerent to say she was not intended to be converted, as otherwise they would be justified in detaining her, and by the time these negotiations were carried through we must be very ill-served if we have not taken precautions against that ship committing depredations. But we always have the fact that we can depend on our own fleet, and that we must have enough cruisers to protect our trade. If we protect our trade we shall get our supplies of food and raw material; if we do not do so we shall not get them. I am quite certain we can not be sufficiently supplied in neutral bottoms. It is 10 per cent, I think, now—it is not a large proportion—which is carried in neutrals. I know it is said that more will be carried in time of war, but I doubt it very much. I am not going to argue that at length, but I believe we should in fact have to carry more and not less in time of war in our own ships. We should never be able to depend on neutral bottoms to feed our population, and if we can not protect our trade routes we could not carry on at all.

My lords, I have spoken, I am afraid, a good deal longer than I intended to speak, but I wanted to explain these points as they struck me, and I do think that we have in this Declaration sacrificed no belligerent right, no belligerent power, that can legitimately be used by any power that makes war. That I look upon as the most important thing of all. I do not think we have made any sacrifice. I do not at all think we have incurred any further risks by the provisions as to the dealing with neutrals; but anyhow, even accepting that criticism—which I do not accept—you must remember that you can not have it both ways. If you take a belligerent right you must concede a belligerent right, and if you take an exemption you must concede an exemption. I think so long as we have the command of the sea and can protect our trade against any reasonable combination that can be brought against us, the equality which I contend is obtained by this Declaration will be of value in avoiding disputes when we are neutrals and in avoiding friction when we are belligerents. So that in the one case we shall have a better chance of obtaining protection to our traders and ships, and in the other case we can carry on our belligerent operations more free from danger of friction with neutrals, which might in some circumstances enormously hamper us in the conducting of the war to a successful conclusion.

The MARQUESS OF LANSDOWNE. My lords, in a few minutes, so far as I am concerned, we shall, I presume, proceed to a division, and I venture to express my earnest hope that every one of your lordships before you decide how you will vote will be careful to consider the position in which this House now stands with regard to all bills that come up from the House of Commons. Earlier in

the evening the noble and learned earl on the Woolsack took my noble friend Lord Selborne rather severely to task for the levity with which he was advising your lordships to destroy this bill. My lords, we are not now in the position of being able to destroy any bill.¹ All that we can do is to delay for a while a bill which in our opinion has not yet been adequately considered either by the whole community or by the classes whom it most affects; and I venture to think that when in the case of any particular bill we are satisfied that further opportunities for consideration on the part of the public are desirable, it is not only our right but our duty to defer the passage of the measure. I will quote a high authority in support of that view. A pamphlet headed "Home Rule Notes" has lately been published, accompanied by a preface or message from the Prime Minister, and I find in that preface the following passage:

It is of the essence of the Parliament bill, both in its letter and spirit, that a bill which becomes law under its operations must have commanded during three successive sessions the unswerving support of the House of Commons, depending directly in its turn upon a stable and consistent public opinion in the constituencies.

In this case what are we to say of the unswerving support of the House of Commons? The normal majority which His Majesty's Government are able to marshal is somewhere about 120. On the second reading of this bill that majority, and I believe it was a strictly party vote, fell to 70, and on the third reading, the other night, it fell yet again to 47. That does not look as if feeling in the House of Commons was very solid or unswerving on the subject.

Then, my lords, is it true that public opinion is stable and consistent in regard to the merits of this measure? We know that the contrary is the case. It has been pointed out during the course of this debate that the whole of the chambers of commerce, and, I believe, virtually the whole of the shipping community are opposed to this bill. It has been admitted that the opinion of naval authorities is much divided upon the subject, and my noble friend behind me reminded the House that although there had indeed been more or less ambiguous *obiter dicta* on the part of various naval officers of distinction, yet we have never been supplied with anything in the shape of an authoritative and considered opinion of the Board of Admiralty on this bill. When I say that I do not suggest for a moment that the people of this country are not in favour of an international prize court, or of a reasonably conceived and carefully drafted code of international law for that court to administer. On

¹ The Parliament bill, which made it possible for the House of Commons to enact legislation without the consent of the Lords by passing public bills in three successive sessions, had been forced through Parliament in the summer.

the contrary, I believe that every one is dissatisfied with the state of things which now obtains with regard to these matters. The noble and learned earl was good enough to appeal to me, and he asked me whether in my experience the present condition of affairs was not unsatisfactory. I answer unhesitatingly that it is most unsatisfactory, and I suppose no one passed more disagreeable quarters of an hour than I did when those cases of seizure during the Russo-Japanese War to which reference has been made took place and we found ourselves powerless to come to the assistance of British ship-owners whose vessels came under the jurisdiction of the national prize courts of Russia. Therefore I for one am ready to co-operate heartily in an attempt to devise a suitable international prize court and to equip that court with a suitable code.

But, my lords, the question we have to answer to-night is whether these two instruments—this bill and the Declaration of London, which, I take it, will stand or fall by this bill—do furnish us with a satisfactory court, and with a satisfactory code. I am one of those who believe that neither of those questions can be answered in the affirmative. The court has been so fully described that I will not repeat the descriptions which have been given of it. It is, let us remember, anything but the court that we ourselves desired to obtain. We asked for a court consisting of three members of The Hague tribunal, associated with two admirals. We have obtained a court which to many of us seems what can only be described as a fantastic court, unduly swollen in numbers, and one upon which this country is quite adequately represented. It is a court constituted, as many of us think, on an altogether wrong principle—the principle of representation of powers rather than the principle of the selection of jurists of great eminence. I may say in passing that I derive no consolation from the article which tells us that every member of the court is to be a jurist of known proficiency in questions of maritime law, and of the highest moral reputation. I do not know what machinery is provided for eliminating jurists whose moral reputations may have some trifling scar or blemish.

Then this court is to decide in private. Secrecy is to be maintained as to its deliberations. I will not dwell upon the facilities that gives for the kind of lobbying and conspiracy which is only too likely to occur when important international cases are under discussion. What seems to us worse than all is that this court is not only to interpret international law, but is to make international law as it goes along, so that particularly in regard to the question undealt with in the convention of the conversion of merchantmen at sea into cruisers, we are absolutely in the hands of the court. It is under this court that we are asked to place the rights of all British subjects,

it is to this court that there is to be an appeal against our own courts of law and against our own courts of appeal. Can we be surprised that this proposal should be regarded with the gravest suspicion by a number of our fellow-countrymen? After all, what you want in a case of this kind is surely a court which will inspire confidence in the minds of those who are to appear before it. What confidence is this court likely to command?

Then may I pass for one moment from the court to the code which it is to administer. This is a vital matter to this country. I take, in the first place, the question of foodstuffs. I believe it is the case that in this country before the harvest we have available about six and a half weeks' supply of wheat; after the harvest, it rises to something like seventeen and a half weeks' supply. The question of foodstuffs may therefore be a matter of life and death to this country. What were the Foreign Secretary's instructions to Sir Edward Fry when he was sent as our plenipotentiary to The Hague? He was told that it was our desire to keep in the free list foodstuffs destined for places other than beleaguered fortresses, and raw materials required for peaceful industries. That was our aspiration. We failed absolutely to get what we wanted, and we find ourselves entangled in the meshes of articles 33 and 34 of the Declaration. What, as the Foreign Secretary very rightfully announced, we most desired was certainty in these matters. I maintain that under those two articles we not only have not got certainty but we have uncertainty of the most perilous description. There is no certainty, there can be no certainty, under these articles either as to the person to whom, or the port to which, foodstuffs can safely be consigned in time of war. I took note, and I am sure all the House did, of the overture which was made to us by the noble earl opposite and repeated by my noble and learned friend on the Woolsack. I understand that what was suggested was that His Majesty's Government should undertake that Part III of this bill should not become operative without an order in council, and that no order of the kind given in council should issue until the other powers had accepted our definition of the ambiguous words in those two articles—the words "enemy," "fortified place" and "base." I welcome that proposal. I think as far as it goes it is a very excellent one. I welcome it also for this reason, that the fact that that proposal is made to us now at the eleventh hour shows that some of us were not altogether unreasonable when we insisted that the original proposals made to us were not quite satisfactory. And we are encouraged by this excellent concession to hope that with a little more insistence on our part other concessions of the same kind may yet be obtained. I do not know, and it would be interesting if the noble earl would tell us, whether the other powers have yet been sounded

with regard to this particular suggestion, or whether it is merely one made on the responsibility of ministers.

But excellent as this proposal is, may I be allowed to point out that it leaves untouched our objections on the one hand to the constitution of the new court, and on the other hand to several of those points in the Declaration of London which seem to us most open to criticism. I am not at this period of the evening going to review these points at length, but let me say a word, first as to the sinking of neutral prizes. Here again the doctrine of the British Foreign Office has been clearly laid down for us. Here is what is said on the subject in the instructions to Sir Edward Fry :

Great Britain has always maintained that the right to destroy is confined to enemy vessels only, and this view is favoured by other powers. Concerning the right to destroy captured neutral vessels the view hitherto taken by the greater naval powers has been that in the event of its being impossible to bring in a vessel for adjudication she must be released. You should urge the maintenance of the doctrine upon this subject which British prize courts have for at least 200 years held to be the law.

That immemorial practice of the British prize courts is therefore to be thrown overboard, and apparently we are to be grateful if matters are not worse. Article 49 of the Declaration expressly abandons the old practice which we have constantly maintained. And pray, let us not forget also that it is in the first instance the officer in command of the captor vessel who determines whether the conditions of article 49 are fulfilled or not. How is the captain of a cruiser to know whether the trader to whom the goods are consigned does business with the enemy or not? How is he to know whether the port to which the vessel is bound is a base of operations or not? If the place is one of importance it is sure to be fortified. If it is not one of importance, is there any means by which the cargo of the ship can be ear-marked as destined solely for the use of the civil population? When it is left to the captain of the ship to say whether by taking his prize into port he will endanger the safety of his own vessel or interfere with the success of his own operations you may be pretty sure that if he is a spirited officer he will decide the question for himself and send the prize to the bottom. This regulation seems specially disadvantageous to us, because whereas we have ports in all parts of the world and could therefore without difficulty take our prizes to them, other countries which have not the same facilities will be able to argue, and argue with a certain amount of plausibility, that, having no port nearer than, say, 1,000 miles, they are bound to destroy their prizes.

I referred a moment ago to the conversion of merchant vessels. That is a matter with regard to which our great commercial inter-

ests are naturally much alarmed. There can be no doubt that one of these converted merchantmen, converted perhaps after she has been enjoying the hospitality of a British port, might paralyse our commerce over a great part of the high seas. I shall be told that upon this point success was unattainable. I dare say it was, but the point is distinctly a bad one for us, and so long as it remains in its present condition noble lords opposite must not be surprised if many people look askance upon the regulation which deals with it.

I say, therefore, that we cannot be surprised at the amount of suspicion and mistrust with which both the bill and the Declaration so closely connected with it are regarded by the people of this country. Even His Majesty's Government are not prepared to ratify the Declaration as it stands, and are prepared to play what I suppose may be described as a waiting game. The noble and learned earl told us that these matters required to be sifted. That is exactly our view. Further, let me assure him that nothing is further from our thoughts than to go out of our way to inflict humiliation upon His Majesty's Government—

The LORD CHANCELLOR. And upon your country.

The MARQUESS OF LANSDOWNE. And, *a fortiori*, upon our own country. I fail altogether to see that there is any humiliation involved in the statement of the simple fact that many of these provisions seem to those who are most concerned in them to require further consideration and discussion. The powers are apparently, if we may infer it from what has been said by the noble earl, ready to meet us at one point at all events. Why should it be impossible for them to meet us at other points also? We hope, on the contrary, that our action, so far from discrediting the executive, may strengthen the hands of the executive and enable them to renew these negotiations with a better prospect of success. And let me say again that, so far from this being, as the noble and learned earl seemed to suppose, a mere manoeuvre instigated by certain enterprising journalists, there is really in the minds of a great many sober and thoughtful people a feeling that the change which would be brought about by the passage of this bill and the ratification of the Declaration would be a change for the worse, and that it ought certainly not to be made without that further consideration which my noble friend behind me desires to obtain for it.

On question, whether the word "now" shall stand part of the motion?

Their lordships divided: Contents, 53; not-contents, 145.

Resolved in the negative, and bill to be read 2^a this day three months.

HOUSE OF COMMONS.

FEBRUARY 21, 1912.¹

NAVAL PRIZE BILL.

Mr. W. Peel asked the Prime Minister if he proposes to reintroduce the naval prize bill during the course of this session.

The PRIME MINISTER. Yes, but I can not say at what time.

MAY 7, 1912.²

NAVAL PRIZE BILL.

Mr. James Mason asked the Prime Minister if he can say when he proposes to introduce the naval prize bill.

Mr. LLOYD GEORGE. I can not at present make any statement. Perhaps the honorable member will be good enough to repeat the question after the Whitsuntide recess.

JULY 31, 1912.³

NAVAL PRIZE BILL.

Mr. Chancellor asked the Prime Minister whether it is the intention of the Government to pass through the Commons this year the naval prize bill, which last year passed third reading, and was rejected by the House of Lords.

The PRIME MINISTER. I can not yet state whether the House will be asked to pass the naval prize bill before the close of the year.

OCTOBER 17, 1912.⁴

NAVAL PRIZE BILL.

Mr. Chancellor asked the Prime Minister whether it is the intention of the Government to reintroduce this session the naval prize bill which was rejected last session by the House of Lords.

The CHANCELLOR OF THE EXCHEQUER (Mr. Lloyd George). The answer is in the negative. We hope that the bill may be introduced next year.

¹ 34 H. C. Deb., 5 s., 614.² 38 H. C. Deb., 5 s., 221.³ 41 H. C. Deb., 5 s., 2077.⁴ 42 H. C. Deb., 5 s., 1406.

DECEMBER 5, 1912.¹

DECLARATION OF LONDON.

Sir J. D. Rees² asked the Secretary for Foreign Affairs what law now obtains in respect of contraband and blockade; what effect, if any, is to be given to the Declaration of London; whether the action of Italy and Turkey in the recent war is to be regarded as a precedent; whether other States are strengthening, or contemplate strengthening, their legislation against breaches of neutrality; and whether, since Great Britain is more adversely affected than any other power by a stiffening of the standard of neutrality, the Government proposes to persist in efforts to obtain the ratification of the Declaration of London.

The SECRETARY OF STATE FOR FOREIGN AFFAIRS (Sir Edward Grey). The rules now governing questions of contraband and blockade are those based on the view of international law prevailing in the several belligerent countries. The Declaration of London, not having been ratified, is not, as such, binding on any country, although, in several instances, belligerents have declared their acceptance of the provisions of the Declaration, so far as they do not conflict with their national law. I do not know what action on the part of Italy and Turkey the honorable member refers to as raising the question of precedent. I have no information respecting the intentions of other Governments in the matter of legislation directed against breaches of neutrality. I am not prepared to accept the view of the honorable member as regards the effect on this country of a raising of the standard of neutrality, nor to admit that this would be the general effect of the Declaration of London. The circumstance which does adversely affect Great Britain is the uncertainty as to what is at present accepted by foreign powers as the correct rule of international law on these matters. This would be removed by the ratification of the Declaration of London and it is therefore desirable to effect it.

¹ 44 H. C. Deb., 5 s., 2454.² Liberal.

APPENDIX

THE DECLARATION OF LONDON.

DECLARATION CONCERNING THE LAWS OF NAVAL WAR.¹

[Translation]

His Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of All the Russias.

Having regard to the terms in which the British Government invited various Powers to meet in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Government;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;

Animated by the desire to insure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval;

Having appointed as their plenipotentiaries, that is to say:

His Majesty the German Emperor, King of Prussia:

M. Krieger, Privy Councilor of Legation and Legal Adviser to the Department for Foreign Affairs, member of the Permanent Court of Arbitration.

¹ Signed at London, Feb. 26, 1909. The text of this Convention is taken from *British Parliamentary Paper, Miscellaneous, No. 4, 1909* [Cd. 4554], p. 73. For the original French text see Naval War College, *International Law Topics: The Declaration of London of February 26, 1909* (Washington, Government Printing Office, 1910), p. 169. For other translations, see *Foreign Relations of the United States*, 1909, p. 318; Naval War College, *ibid.*

The President of the United States of America :

Rear Admiral Charles H. Stockton, retired ;

Mr. George Grafton Wilson, professor at Brown University and lecturer on international law at the Naval War College and at Harvard University.

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary :

His Excellency M. Constantin Théodore Dunba, Privy Councilor of His Imperial and Royal Apostolic Majesty, Envoy Extraordinary and Minister Plenipotentiary.

His Majesty the King of Spain :

M. Gabriel Maura y Gamazo, Count de la Mortera, Member of Parliament.

The President of the French Republic :

M. Louis Renault, professor of the Faculty of Law at Paris, Honorary Minister Plenipotentiary, Legal Adviser to the Ministry of Foreign Affairs, member of the Institute of France, member of the Permanent Court of Arbitration.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India :

The Earl of Desart, K. C. B., King's Proctor.

His Majesty the King of Italy :

M. Guido Fusinato, Councilor of State, Member of Parliament, ex-Minister of Public Instruction, member of the Permanent Court of Arbitration.

His Majesty the Emperor of Japan :

Baron Toshiatsu Sakamoto, Vice Admiral, Head of the Department of Naval Instruction ;

M. Enjiro Yamaza, Councilor of the Imperial Embassy at London.

Her Majesty the Queen of the Netherlands :

His Excellency Jonkheer J. A. Röell, Aide-de-camp to Her Majesty the Queen in extraordinary service, Vice Admiral retired, ex-Minister of Marine.

Jonkheer L. H. Ruysenaers, Envoy Extraordinary and Minister Plenipotentiary, ex-Secretary General of the Permanent Court of Arbitration.

His Majesty the Emperor of all the Russias :

Baron Taube, Doctor of Laws, Councilor to the Imperial Ministry of Foreign Affairs, professor of international law at the University of St. Petersburg.

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration :—

PRELIMINARY PROVISION.

The signatory Powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

CHAPTER I.—*Blockade in time of war.*

ARTICLE 1.

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

ARTICLE 2.

In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

ARTICLE 3.

The question whether a blockade is effective is a question of fact.

ARTICLE 4.

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

ARTICLE 5.

A blockade must be applied impartially to the ships of all nations.

ARTICLE 6.

The commander of a blockading force may give permission to a war-ship to enter, and subsequently to leave, a blockaded port.

ARTICLE 7.

In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessels may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ARTICLE 8.

A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

ARTICLE 9.

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

- (1) The date when the blockade begins;
- (2) The geographical limits of the coastline under blockade;
- (3) The period within which neutral vessels may come out.

ARTICLE 10.

If the operations of the blockading Power or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ARTICLE 11.

A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it;

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

ARTICLE 12.

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is reestablished after having been raised.

ARTICLE 13.

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

ARTICLE 14.

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ARTICLE 15.

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification

of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 16.

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's log book, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ARTICLE 17.

Neutral vessels may not be captured for breach of blockade except within the area of operations of the war-ships detailed to render the blockade effective.

ARTICLE 18.

The blockading forces must not bar access to neutral ports or coasts.

ARTICLE 19.

Whatever may be the ulterior destination of a vessel or of her cargo, she can not be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

ARTICLE 20.

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ARTICLE 21.

A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

CHAPTER II.—*Contraband of war.*

ARTICLE 22.

The following articles may, without notice,¹ be treated as contraband of war, under the name of absolute contraband:

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armor plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

ARTICLE 23.

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

ARTICLE 24.

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

(1) Foodstuffs.

(2) Forage and grain, suitable for feeding animals.

(3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.

¹ In view of the difficulty of finding an exact equivalent in English for the expression "*de plein droit*," it has been decided to translate it by the words "without notice," which represent the meaning attached to it by the draftsman as appears from the General Report (see *British Parliamentary Paper*, *loc. cit.*, p. 44).

² See note on Article 22.

(4) Gold and silver in coin or bullion; paper money.

(5) Vehicles of all kinds available for use in war, and their component parts.

(6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.

(7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.

(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.

(9) Fuel; lubricants.

(10) Powder and explosives not specially prepared for use in war.

(11) Barbed wire and implements for fixing and cutting the same.

(12) Horseshoes and shoeing materials.

(13) Harness and saddlery.

(14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

ARTICLE 25.

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 26.

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 27.

Articles which are not susceptible of use in war may not be declared contraband of war. ▽

ARTICLE 28.

The following may not be declared contraband of war:

(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts; copra.

(3) Rubber, resins, gums, and lacs; hops.

(4) Rawhides and horns, bones and ivory.

- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint, and colors, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semiprecious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration; office furniture and requisites.

ARTICLE 29.

Likewise the following may not be treated as contraband of war:

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ARTICLE 30.

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

ARTICLE 31.

Proof of the destination specified in Article 30 is complete in the following cases:

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy

before reaching the neutral port for which the goods in question are documented.

ARTICLE 32.

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ARTICLE 33.

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods can not in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

ARTICLE 34.

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this article may be rebutted.

ARTICLE 35.

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ARTICLE 36.

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

ARTICLE 37.

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

ARTICLE 38.

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ARTICLE 39.

Contraband goods are liable to condemnation.

ARTICLE 40.

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ARTICLE 41.

If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

ARTICLE 42.

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

ARTICLE 43.

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband can not be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband, respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ARTICLE 44.

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the log book of the vessel stopped and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

CHAPTER III.—*Unneutral service.*

ARTICLE 45.

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:—

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 46.

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

(1) If she takes a direct part in the hostilities:

(2) If she is under the orders or control of an agent placed on board by the enemy Government;

(3) If she is in the exclusive employment of the enemy Government;

(4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present article, goods belonging to the owner of the vessel are likewise liable to condemnation.

ARTICLE 47.

Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

CHAPTER IV.—*Destruction of neutral prizes.*

ARTICLE 48.

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

ARTICLE 49.

As an exception, a neutral vessel which has been captured by a belligerent war-ship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the war-ship or to the success of the operations in which she is engaged at the time.

ARTICLE 50.

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the war-ship.

ARTICLE 51.

A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

ARTICLE 52.

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

ARTICLE 53.

If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ARTICLE 54.

The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log-book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

CHAPTER V.—*Transfer to a neutral flag.*

ARTICLE 55.

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

ARTICLE 56.

The transfer of an enemy vessel to a neutral flag effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void :

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled.

CHAPTER VI.—*Enemy character.*

ARTICLE 57.

Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace remains outside the scope of and is in no wise affected by this rule.

ARTICLE 58.

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

ARTICLE 59.

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

ARTICLE 60.

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

CHAPTER VII.—*Convoy.*

ARTICLE 61.

Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes which could be obtained by search.

ARTICLE 62.

If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

CHAPTER VIII.—*Resistance to Search.*

ARTICLE 63.

Forcible resistance to the legitimate exercise of the right to stoppage, search, and capture involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

CHAPTER IX.—*Compensation.*

ARTICLE 64.

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

FINAL PROVISIONS.

ARTICLE 65.

The provisions of the present Declaration must be treated as a whole, and can not be separated.

ARTICLE 66.

The signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

ARTICLE 67.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a protocol signed by the representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the protocol relating to the first deposit of ratifications and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

ARTICLE 68.

The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the protocol recording such deposit, and in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ARTICLE 69.

In the event of one of the signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

ARTICLE 70.

The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers

which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the signatory Powers.

ARTICLE 71.

The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

[Here follow the signatures.¹]

¹ The following States appended their signatures prior to March 20, 1909: Germany, United States of America, Austria-Hungary, France, Great Britain, and the Netherlands. Subsequent signatories are: Spain, Italy, Russia, and Japan.

THE NAVAL PRIZE BILL.

A BILL [AS AMENDED BY STANDING COMMITTEE C] TO CONSOLIDATE, WITH AMENDMENTS, THE ENACTMENTS RELATING TO NAVAL PRIZE OF WAR.¹

Whereas at the Second Peace Conference held at The Hague in the year nineteen hundred and seven a Convention, the English translation whereof is set forth in the First Schedule to this Act, was drawn up, but it is desirable that the same should not be ratified by His Majesty until such amendments have been made in the law relating to naval prize of war as will enable effect to be given to the Convention:

And whereas for the purpose aforesaid it is expedient to consolidate the law relating to naval prize of war with such amendments as aforesaid and with certain other minor amendments:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

COURTS AND OFFICERS.

The Prize Court in England.

1. (1) The High Court shall, without special warrant, be a prize court, and shall, on the high seas, and throughout His Majesty's Dominions, and in every place where His Majesty has jurisdiction, have all such jurisdiction as the High Court of Admiralty possessed when acting as a prize court, and generally have jurisdiction to determine all questions as to the validity of the capture of a ship or goods, the legality of the destruction of a captured ship or goods, and as to the payment of compensation in respect of such a capture or destruction.

For the purposes of this Act the expression "capture" shall include seizure for the purpose of the detention, requisition, or destruction of any ship or goods which, but for any convention, would be liable to condemnation, and the expressions "captured" and "taken as prize" shall be construed accordingly, and where any ship or

¹ *British Parliamentary Papers*, 1911, vol. 4 (Bill, No. 334).

goods have been so seized the court may make an order for the detention, requisition, or destruction of the ships or goods and for the payment of compensation in respect thereof.

(2) Subject to rules of court, all causes and matters within the jurisdiction of the High Court as a prize court shall be assigned to the Probate, Divorce, and Admiralty Division of the Court.

2. The High Court as a prize court shall have power to enforce any order or decree of a prize court in a British possession, and any order of the Supreme Prize Court constituted under this Act in a prize appeal.

Prize Courts in British Possessions.

3. His Majesty may, by commission addressed to the Admiralty, empower the Admiralty to authorise, and the Admiralty may thereupon by warrant authorise, either a Vice Admiralty court or a Colonial Court of Admiralty, within the meaning of the Colonial Courts of Admiralty Act, 1890, to act as a prize court in a British possession, or may in like manner establish a Vice Admiralty court for the purpose of so acting; and any court so authorised shall, subject to the terms of the warrant from the Admiralty, have all such jurisdiction as is by this Act conferred on the High Court as a prize court.

4. (1) Any commission, warrant, or instructions from His Majesty the King or the Admiralty for the purpose of commissioning a prize court at any place in a British possession may, notwithstanding the existence of peace, be issued at any time, with a direction that the court shall act only upon such proclamation as hereinafter mentioned being made in the possession.

(2) Where any such commission, warrant, or instructions have been issued, then, subject to instructions from His Majesty the Vice Admiral of such possession may, when satisfied by information from a Secretary of State or otherwise that war has broken out between His Majesty and any foreign State, proclaim that war has so broken out, and thereupon the said commission, warrant, and instructions shall take effect as if the same had been issued after the breaking out of such war and such foreign State were named therein.

(3) Any such commission, warrant, or instructions may be revoked or altered from time to time.

5. Every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the High Court and of any other prize court in a British possession, in prize causes, and all orders of the Supreme Prize Court constituted under this Act in prize appeals.

6. (1) His Majesty in Council may, with the concurrence of the Treasury, grant to the judge of any prize court in a British pos-

session, other than a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, remuneration, at a rate not exceeding five hundred pounds a year, payable out of money provided by Parliament, subject to such regulations as seem meet.

(2) A judge to whom remuneration is so granted shall not be entitled to any further emolument, arising from fees or otherwise, in respect of prize business transacted in his court.

(3) An account of all such fees shall be kept by the registrar of the court, and the amount thereof shall be carried to and form part of the Consolidated Fund of the United Kingdom.

7. The registrar of every prize court in a British possession shall, on the first day of January and the first day of July in every year, make out a return (in such form as the Admiralty from time to time direct) of all cases adjudged in the court since the last half-yearly return, and shall with all convenient speed send the same to the Admiralty registrar of the Probate, Divorce, and the Admiralty Division of the High Court, who shall keep the same in the Admiralty registry of that Division, and who shall, as soon as conveniently may be, send a copy of the return of each half year to the Admiralty, and the Admiralty shall lay the same before both Houses of Parliament.

8. If any Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, is authorized under this Act or otherwise to act as a prize court, all fees arising in respect of prize business transacted in the court shall be fixed, collected, and applied in like manner as the fees arising in respect of the Admiralty business of the court under the first-mentioned Act.

Appeals.

9. (1) Any appeal from the High Court when acting as a prize court, or from a prize court in a British possession, shall lie only to a court (to be called the Supreme Prize Court) consisting of such members for the time being of the Judicial Committee of the Privy Council as may be nominated by His Majesty for that purpose.

(2) The Supreme Prize Court shall be a court of record with power to take evidence on oath, and the seal of the court shall be such as the Lord Chancellor may from time to time direct.

(3) Every appeal to the Supreme Prize Court shall be heard before not less than three members of the court sitting together.

(4) The registrar and other officers for the time being of the Judicial Committee of the Privy Council shall be registrar and officers of the Supreme Prize Court.

10. (1) An appeal shall lie to the Supreme Prize Court from any order or decree of a prize court, as of right in case of a final decree,

and in other cases with the leave of the court making the order or decree or of the Supreme Prize Court.

(2) Every appeal shall be made in such manner and form and subject to such conditions and regulations (including regulations as to fees, costs, charges, and expenses) as may for the time being be directed by Order in Council.

11. The Supreme Prize Court shall have jurisdiction to hear and determine any such appeal, and may therein exercise all such powers as are under this Act vested in the High Court, and all such powers as were wont to be exercised by the Commissioners of Appeal or by the Judicial Committee of the Privy Council in prize causes.

Rules of Court.

12. His Majesty in Council may make rules of court for regulating, subject to the provisions of this Act, the procedure and practice of the Supreme Prize Court and of the prize courts within the meaning of this Act, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and the expenses to be allowed to the practitioners therein.

Officers of Prize Courts.

13. It shall not be lawful for any registrar, marshal, or other officer of the Supreme Prize Court or of any other prize court, directly or indirectly to act or to be in any manner concerned as advocate, proctor, solicitor, or agent, or otherwise, in any prize appeal or cause.

14. The Public Authorities Protection Act, 1893, shall apply to any action, prosecution, or other proceeding against any person for any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act whether commenced in the United Kingdom or elsewhere within His Majesty's dominions.

Continuance of Proceedings.

15. A court duly authorised to act as a prize court during any war shall after the conclusion of the war continue so to act in relation to, and finally dispose of all matters and things which arose during the war, including all penalties, liabilities, and forfeitures incurred during the war.

PART II.

PROCEDURE IN PRIZE CAUSES.

16. Where a ship (not being a ship of war) is taken as prize, and is or is brought within the jurisdiction of a prize court, she shall forthwith be delivered up to the marshal of the court, or, if there

is no such marshal, to the principal officer of customs at the port, and shall remain in his custody, subject to the orders of the court.

17. (1) The captors shall in all cases, with all practicable speed, bring the ship papers into the registry of the court.

(2) The officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture and saw the ship papers delivered up or found on board, shall make oath that they are brought in as they were taken, without fraud, addition, subduction, or alteration, or else shall account on oath to the satisfaction of the court for the absence or altered condition of the ship papers or any of them.

(3) Where no ship papers are delivered up or found on board the captured ship, the officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture, shall make oath to that effect.

18. The captors shall also, unless the court otherwise directs, with all practicable speed after the captured ship is brought into port, bring a convenient number of the principal persons belonging to the captured ship before the judge of the court or some person authorized in this behalf, by whom they shall be examined on oath.

19. The court may, if it thinks fit, at any time after a captured ship has been appraised, direct that the ship be delivered up to the claimant on his giving security to the satisfaction of the court to pay to the captors the appraised value thereof in case of condemnation.

20. The court may at any time, if it thinks fit, on account of the condition of the captured ship, or on the application of a claimant, or on or after condemnation, order that the captured ship be appraised (if not already appraised), and be sold.

21. Where a ship has been taken as prize, a prize court may award compensation in respect of the capture notwithstanding that the ship has been released, whether before or after the institution of any proceedings in the court in relation to the ship.

22. (1) The provisions of this part of this Act relating to ships shall extend and apply, with the necessary adaptations, to goods taken as prize.

(2) The provisions of this part of this Act shall have effect subject to any rules of court dealing with the subject matter thereof.

PART III.

INTERNATIONAL PRIZE COURT.

23. (1) In the event of an International Prize Court being constituted in accordance with the said Convention or with any Convention entered into for the purpose of enabling any Power to become a party to the said Convention or for the purpose of amending the said Convention in matters subsidiary or incidental thereto (herein-

after referred to as the International Prize Court), it shall be lawful for His Majesty from time to time to appoint a judge and a deputy judge of the court.

(2) A person shall not be qualified to be appointed by His Majesty a judge or deputy judge of the court unless he has been, at or before the time of his appointment, the holder, for a period of not less than two years, of some one or more of the offices described as high judicial offices of by the Appellate Jurisdiction Act, 1876, as amended by any subsequent enactment.

24. Any sums required for the payment of any contribution toward the general expense of the International Prize Court payable by His Majesty under the said Convention shall be charged on and paid out of the Consolidated Fund and the growing proceeds thereof.

25. In cases to which this part of this Act applies an appeal from the Supreme Prize Court shall lie to the International Prize Court.

26. If in any case to which this part of this Act applies final judgment is not given by the prize court, or on appeal by the Supreme Prize Court, within two years from the date of the capture, the case may be transferred to the International Prize Court.

27. His Majesty in Council may make rules regulating the manner in which appeals and transfers under this part of this Act may be made and with respect to all such matters (including fees, costs, charges, and expenses) as appear to His Majesty to be necessary for the purpose of such appeals and transfers, or to be incidental thereto or consequential thereon.

28. The High Court and every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the International Prize Court in appeals and cases transferred to the court under this part of this Act.

29. This part of this Act shall apply only to such cases and during such period as may for the time being be directed by Order in Council, and His Majesty may by the same or any other Order in Council apply this part of this Act subject to such conditions, exceptions, and qualifications as may be deemed expedient.

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PART IV.

PRIZE SALVAGE AND PRIZE BOUNTY.

Prize salvage.

30. Where any ship or goods belonging to any of His Majesty's subjects, after being taken as prize by the enemy, is or are retaken from the enemy by any of His Majesty's ships of war, the same shall be restored by decree of a prize court to the owner.

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PART VII.

MISCELLANEOUS PROVISIONS.

Supplemental.

45. Nothing in this Act shall—

(1) Give to the officers and crew of His Majesty's ships of war any right or claim in or to any ships or goods taken as prize or the proceeds thereof, it being the intent of this Act that such officers and crews shall continue to take only such interest (if any) in the proceeds of prizes as may be from time to time granted to them by the Crown, or

(2) Affect the operation of any existing treaty or convention with any foreign power; or

(3) take away or abridge the power of the Crown to enter into any treaty or convention with any foreign power containing any stipulation that may seem meet concerning any matter to which this Act relates; or

(4) take away, abridge, or control, further or otherwise than as expressly provided by this Act, any right, power, or prerogative of His Majesty the King in right of His Crown, or in right of His office of Admiralty, or any right or power of the Admiralty; or

(5) take away, abridge, or control, further or otherwise than as expressly provided by this Act, the jurisdiction or authority of a prize court to take cognizance of and judicially proceed upon any capture, seizure, prize, or reprisal of any ship or goods, and to hear and determine the same, and, according to the course of Admiralty and the law of nations, to adjudge and condemn any ships or goods, or any other jurisdiction or authority of or exercisable by a prize court.



